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AUTHORITY: 42 U.S.C. 1437d, 1437l, and 3535(d).

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Subpart A—General

§ 968.101 Purpose and applicability.

(a) *Purpose.* The purpose of this part is to set forth the policies and procedures for the Modernization program authorizing HUD to provide financial assistance to Public Housing Agencies (PHAs).

(b) *Applicability.* (1) Subpart A of this part applies to all modernization under this part. Subpart B of this part sets forth the requirements and procedures for the Comprehensive Improvement Assistance Program (CIAP) for PHAs that own or operate fewer than 250 public housing units. Subpart C of this part sets forth the requirements and procedures for the Comprehensive Grant Program (CGP) for PHAs that own or operate 250 or more units. A PHA that qualifies for participation in the CGP is not eligible to participate in the CIAP. A PHA that has already qualified to participate in the CGP may elect to continue to participate in the CGP so long as it owns or operates at least 200 units.

(2) This part applies to PHA-owned low-income public housing developments (including developments managed by a resident management corporation pursuant to a contract with the PHA); conveyed Lanham Act and Public Works Administration (PWA) developments; and to Section 23 Leased Housing Bond-Financed developments. Rental developments which are planned for conversion to homeownership under sections 5(h), 21, or 301 of the Act, but which have not yet been sold by a PHA, continue to qualify for assistance under this part. This part does not apply to developments under the Section 23 Leased Housing Non-Bond Financed program, the Section 10(c) Leased program, or the Section 23 or Section 8 Housing Assistance Payments programs.

(3) A section 23 Leased Housing Bond-Financed development is eligible for modernization only if HUD determines

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that the development has met the following conditions:

(i) The development was financed by the issuance of bonds;

(ii) Clear title to the development will be conveyed to or vested in the PHA at the end of the section 23 lease term;

(iii) There are no legal obstacles affecting the PHA's use of the property as public housing during the 20-year period of the modernization;

(iv) After completion of the modernization, the development will have a remaining useful life of at least 20 years and it is in the financial interest of the Federal Government to improve the development; and

(v) The development is covered by a cooperation agreement between the PHA and local governing body during the 20-year period of the modernization.

(4) A section 23 Leased Housing Bond-Financed development which has been conveyed to the PHA after the bonds have been retired is similarly eligible for modernization if the conditions specified under paragraph (b)(3) of this section have been satisfied.

(5) A development/building/unit which is assisted under section 5(j)(2) of the Act (Major Reconstruction of Obsolete Projects) (MROP) is eligible for section 14 funding (CIAP or CGP) where it received MROP funding after FFY 1988 and has reached Date of Full Availability (DOFA) or where it received MROP funding during FFYs 1986-1988 and all MROP funds have been expended.

(c) *Transition.* Any amount that HUD has approved for a PHA must be used for the purposes for which the funding was provided, or:

(1) For a CGP PHA, for purposes consistent with an approved Annual Statement or Five-Year Action Plan submitted by the PHA, as the PHA determines to be appropriate; or

(2) For a CIAP PHA, in accordance with a revised CIAP budget.

(d) *Approved information collections.* The following sections of this subpart have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 and assigned OMB approval number 2577-0044: §§ 968.135, 968.145, 968.210,

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968.215, 968.225, and 968.230. The following sections of this subpart have been similarly approved and assigned approval number 2577.0157: §§ 968.310, 968.315, 968.325, and 968.330.

[57 FR 5570, Feb. 14, 1992, as amended at 58 FR 13930, Mar. 15, 1993; 61 FR 8737, Mar. 5, 1996]

§ 968.102 Special requirements for Turnkey III developments.

(a) *Modernization Costs.* Modernization work on a Turnkey III unit shall not increase the purchase price or amortization period of the home.

(b) *Eligibility of paid-off and conveyed units for assistance—*(1) *Paid-off units.* A Turnkey III unit that is paid off but has not been conveyed at the time the CIAP application or CGP Annual Submission is submitted, is eligible for any physical improvement under § 968.112(d).

(2) *Conveyed units.* Where modernization work has been approved before conveyance, the PHA may complete the work even if title to the unit is subsequently conveyed before the work is completed. However, once conveyed, the unit is not eligible for additional or future assistance. A PHA shall not use funds provided under this part for the purpose of modernizing units if the modernization work was not approved before conveyance of title.

(c) *Other.* The homebuyer family must be in compliance with its financial obligations under its homebuyer agreement in order to be eligible for non-emergency physical improvements, with the exception of work necessary to meet statutory and regulatory requirements, (e.g., accessibility for persons with disabilities and lead-based paint activities) and the correction of development deficiencies. Notwithstanding the above requirement, a PHA may, with prior HUD approval, complete non-emergency physical improvements on any homeownership unit where the PHA demonstrates that, due to economies of scale or geographic constraints, substantial cost savings may be realized by completing all necessary work in a development at one time.

[59 FR 44837, Aug. 30, 1994, as amended at 61 FR 8737, Mar. 5, 1996; 62 FR 27126, May 16, 1997; 64 FR 50229, Sept. 15, 1999]

§ 968.103 Allocation of funds under section 14.

(a) *General.* This section describes the process for allocating modernization funds to the aggregate of PHAs and IHAs participating in the CIAP and to individual PHAs and IHAs participating in the CGP.

(b) *Set-aside for emergencies and disasters.* For each FFY, HUD shall reserve from amounts approved in the appropriation act for grants under this part and part 950 of this title, an amount not to exceed \$75 million (which shall include unused reserve amounts carried over from previous FFYs), which shall be made available to PHAs and IHAs for modernization needs resulting from natural and other disasters, and from emergencies. HUD shall replenish this reserve at the beginning of each FFY. Any unused funds from previous years may remain in the reserve until allocated. The requirements governing the reserve for disasters and emergencies and the procedures by which a PHA may request such funds, are set forth in § 968.104.

(c) *Set-aside for credits for mod troubled PHAs under subpart C of this part.* After deducting an amount for the reserve for natural and other disasters and for emergencies under paragraph (b) of this section, HUD shall set aside from the funds remaining no more than five percent for the purpose of providing credits to PHAs that were formerly designated as mod troubled agencies under the Public Housing Management Assessment Program (PHMAP) (see 24 CFR part 901). The purpose of this set-aside is to compensate these PHAs for amounts previously withheld by HUD because of a PHA's prior designation as a mod troubled agency. Since part 901 of this chapter does not apply to IHAs, they are not classified as "mod troubled" and they do not participate in the set-aside credits established under paragraph (c) of this section.

(d) *Formula allocation based on relative needs.* After determining the amounts to be reserved under paragraphs (b) and (c) of this section, HUD shall allocate the amount remaining pursuant to the formula set forth in paragraphs (e) and (f) of this section, which is designed to

measure the relative backlog and accrual needs of PHAs and IHAs.¹

(e) *Allocation for backlog needs.* HUD shall allocate half of the formula amount under paragraph (d) of this section based on the relative backlog needs of PHAs and IHAs, as follows:

(1) *Determination of backlog need:*

(i) *Statistically reliable data are available.* Where HUD determines that the data concerning the categories of backlog need identified under paragraph (e)(4) of this section are statistically reliable for individual IHAs and PHAs with 250 or more units, or for the aggregate of IHAs and PHAs with fewer than 250 units, which are not participating in the formula funding portion of the modernization program, it will base its allocation on direct estimates of the statutory categories of backlog need, based on the most recently available, statistically reliable data;

(ii) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data concerning the categories of backlog need identified under paragraph (e)(4) of this section are not available for individual PHAs and IHAs with 250 or more units, it will base its allocation of funds under this section on estimates of the categories of backlog need using:

(A) The most recently available data on the categories of backlog need under paragraph (e)(4) of this section;

(B) Objectively measurable data concerning the following PHA or IHA, community and development characteristics:

(1) The average number of bedrooms in the units in a development. (Weighted at 2858.7);

(2) The proportion of units in a development available for occupancy by very large families. (Weighted at 7295.7);

(3) The extent to which units for families are in high-rise elevator developments. (Weighted at 5555.8);

¹In construing all terms used in the statutory indicators for estimating backlog and accrual need, HUD shall use the meanings cited in Appendix B of the HUD Report to the Congress on Alternative Methods for Funding Public Housing Modernization (April 1990). Copies of the HUD Report to Congress may be obtained by contacting the HUD User at 1-800-245-2691.

(4) The age of the developments, as determined by the DOFA date (date of full availability). In the case of acquired developments, HUD will use the DOFA date unless the PHA provides HUD with the actual date of construction, in which case HUD will use the actual date of construction (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50 year cap. (Weighted at 206.5);

(5) In the case of a large agency, the number of units with 2 or more bedrooms. (Weighted at .433);

(6) The cost of rehabilitating property in the area. (Weighted at 27544.3);

(7) For family developments, the extent of population decline in the unit of general local government determined on the basis of the 1970 and 1980 censuses. (Weighted at 759.5);

(C) An equation constant of 1412.9.

(2) *Calibration of backlog need for developments constructed prior to 1985.* The estimated backlog need, as determined under either paragraph (e)(1)(i) or (e)(1)(ii) of this section, shall be adjusted upward for developments constructed prior to 1985 by a constant ratio of 1.5 to more accurately reflect the costs of modernizing the categories of backlog need under paragraph (e)(4) of this section for the public housing stock as of 1991.

(3) Replacement factor to reflect backlog need for developments with demolition, disposition, or conversion occurring on or after October 1, 1996. (i) PHAs that have a reduction in units attributable to demolition, disposition, or conversion of units during the period (reflected in data maintained by HUD) that lowers the formula unit count for the Comprehensive Grant formula calculations qualify for application of a replacement housing factor, subject to satisfaction of criteria stated in paragraph (e)(3)(ii) of this section. The factor will be added, where applicable, for the first 5 years after such reduction, and consists of 50 percent of the published Total Development Cost for a two-bedroom unit in a walkup type structure for the period April 3, 1996 through April 30, 1997, multiplied times the number of units to be demolished, disposed of, or converted. The total relative backlog need of the

PHA resulting from application of this replacement factor cannot exceed the share it would have had if the demolition, disposition, or conversion had not taken place.

(ii) A PHA is eligible for application of this factor only if the PHA satisfies the following criteria:

(A) The PHA requests the application of the replacement factor;

(B) The restored funding that results from the use of the replacement factor is used to provide replacement housing (in any year in which replacement housing is an eligible activity) or accelerated renovation of vacant but viable units, in accordance with the PHA's five-year action plan, approved by HUD (see § 968.315);

(C) The PHA does not receive funding under the public housing development; Major Reconstruction of Obsolete Public Housing, or HOPE VI programs for the units developed or modernized with funds received under this replacement housing factor;

(D) A PHA that has been determined by HUD to be troubled or mod-troubled that is not already under the direction of HUD or a court-appointed receiver, in accordance with part 901 of this chapter, must use an Alternative Management Entity as defined in § 901.5 of this chapter for development of replacement housing and must comply with any applicable provisions of its Memorandum of Agreement executed with HUD under that part; and

(E) Any development of replacement housing by any PHA must be done in accordance with part 941 of this chapter.

(iii) If the PHA does not use the restored funding that results from the use of the replacement factor to provide replacement housing or renovate vacant units in a timely fashion, in accordance with § 968.125 and § 941.501 of this chapter, and make reasonable progress on such use of the funding, in accordance with § 968.335(a)(3) and § 941.501, HUD may require appropriate corrective action under § 968.335 and § 941.501; may recapture and reallocate the funds; or may use other remedies available to HUD.

(4) *Deduction for prior modernization.* HUD shall deduct from the estimated

backlog need, as determined under either paragraph (e)(1)(i) or (e)(1)(ii) of this section, amounts previously provided to a PHA or IHA for modernization, using one of the following methods:

(i) *Standard deduction for prior CIAP and MROP.* HUD shall deduct 60 percent of the CIAP funds made available on a PHA-wide or IHA-wide basis from FFY 1984 to 1991, and 40 percent of the funds made available on a development-specific basis for the Major Reconstruction of Obsolete Projects (MROP) (not to exceed the estimated formula need for the development), subject to a maximum fifty percent deduction of a PHA's or IHA's total need for backlog funding;

(ii) *Newly constructed units.* Units with a DOFA date of October 1, 1991 or thereafter will be considered to have a zero backlog; or

(iii) *Acquired developments.* Developments acquired by a PHA with a DOFA date of October 1, 1991 or thereafter will be considered by HUD to have a zero backlog.

(5) *Categories of backlog need.* The most recently available data used under either paragraph (e)(1)(i) or (e)(1)(ii) of this section must pertain to the following categories of backlog need:

(i) Backlog of needed repairs and replacements of existing physical systems in public housing developments;

(ii) Items that must be added to developments to meet HUD's modernization standards under § 968.115, and State and local codes; and

(iii) Items that are necessary or highly desirable for the long-term viability of a development, in accordance with HUD's modernization standards.

(f) *Allocation for accrual needs.* HUD shall allocate the other half remaining under the formula allocation under paragraph (d) of this section based upon the relative accrual needs of PHAs and IHAs, determined as follows:

(1) *Statistically reliable data are available.* Where HUD determines that statistically reliable data are available concerning the categories of need identified under paragraph (f)(3) of this section for individual PHAs and IHAs with 250 or more units, and for the aggregate of PHAs and IHAs with fewer than

250 units, it shall base its allocation of assistance under this section on the needs that are estimated to have accrued since the date of the last objective measurement of backlog needs under paragraph (e)(1)(i) of this section;

(2) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data concerning the categories of need identified under paragraph (f)(3) of this section are not available for individual PHAs and IHAs with 250 or more units, it shall base its allocation of assistance under this section on estimates of accrued need using:

(i) The most recently available data on the categories of accrual need under paragraph (f)(3) of this section;

(ii) Objectively measurable data concerning the following PHA or IHA, community, and development characteristics:

(A) The average number of bedrooms in the units in a development. (Weighted at 100.1);

(B) The proportion of units in a development available for occupancy by very large families. (Weighted at 356.7);

(C) The age of the developments. (Weighted 10.4);

(D) The extent to which the buildings in developments of an agency average fewer than 5 units. (Weighted at 87.1);

(E) The cost of rehabilitating property in the area. (Weighted at 679.1);

(F) The total number of units of each PHA or IHA that owns or operates 250 or more units. (weighted at .0144);

(iii) An equation constant of 602.1.

(3) *Categories of need.* The data to be provided under either paragraph (f)(1) or (2) of this section must pertain to the following categories of need:

(i) Backlog of needed repairs and replacements of existing physical systems in public housing developments; and

(ii) Items that must be added to developments to meet HUD's modernization standards under § 968.115, and State and local codes.

(4) *Replacement factor to reflect accrual need for developments with demolition, disposition, or conversion occurring on or after October 1, 1996.* (i) PHAs that have a reduction in units attributable to demolition, disposition, or conversion

of units during the period (reflected in data maintained by HUD) that lowers the formula unit count for the Comprehensive Grant formula calculations qualify for application of a replacement housing factor, subject to satisfaction of criteria stated in paragraph (f)(4)(ii) of this section. The factor will be added, where applicable, for the first five years after such reduction, and consists of two percent of the published Total Development Cost for a two-bedroom unit in a walkup type structure for the period April 3, 1996 through April 30, 1997, multiplied times the number of units to be demolished, disposed of, or converted. The total relative accrual need of the PHA resulting from application of this replacement factor cannot exceed the share it would have had if the demolition, disposition, or conversion had not taken place.

(ii) A PHA is eligible for application of this factor only if the PHA satisfies the following criteria:

(A) The PHA requests the application of the replacement factor;

(B) The restored funding that results from the use of the replacement factor is used to provide replacement housing (in any year in which replacement housing is an eligible activity) or accelerated renovation of vacant but viable units, in accordance with the PHA's five-year action plan, approved by HUD (see § 968.315);

(C) The PHA does not receive funding under the public housing development, Major Reconstruction of Obsolete Public Housing, or HOPE VI programs for the units developed or modernized with funding received under this replacement housing factor;

(D) A PHA that has been determined by HUD to be troubled or mod-troubled, in accordance with part 901 of this chapter that is not already under the direction of HUD or a court-appointed receiver, must use an Alternative Management Entity as defined in § 901.5 of this chapter for development of replacement housing and must comply with any applicable provisions of its Memorandum of Agreement executed with HUD under that part; and

(E) Any development of replacement housing by any PHA must be done in accordance with part 941 of this chapter.

(iii) If the PHA does not use the restored funding that results from the use of the replacement factor to provide replacement housing or renovate vacant units in a timely fashion, in accordance with § 968.125 and § 941.501 of this chapter, and make reasonable progress on such use of the funding, in accordance with § 968.335(a)(3) and § 941.501, HUD may require appropriate corrective action under § 968.335 and § 941.501; may recapture and reallocate the funds; or may use other remedies available to HUD.

(g) *Allocation of CIAP.* The formula amount determined under paragraphs (e) and (f) of this section for PHAs and IHAs with fewer than 250 units shall be allocated to PHAs in accordance with the requirements of subpart B of this part (the CIAP), and to IHAs in accordance with the requirements of 24 CFR part 950, subpart I.

(h) *Allocation for CGP.* The formula amount determined under paragraphs (e) and (f) of this section for PHAs with 250 or more units shall be allocated in accordance with the requirements of subpart C of this part (the CGP), and for IHAs in accordance with the requirements of 24 CFR part 950, subpart I. A PHA that is eligible to receive a grant under the CGP may appeal the amount of its formula allocation in accordance with the requirements set forth in § 968.310(b). A PHA that is eligible to receive modernization funds under the CGP because it owns or operates 250 or more units is disqualified from receiving assistance under the CIAP under this part.

(i) *Use of formula allocation.* Any amounts allocated to a PHA under paragraphs (e) and (f) of this section may be used for any eligible activity under this part, notwithstanding that the allocation amount is determined by allocating half based on the relative backlog needs and half based on the relative accrual needs of PHAs and IHAs.

(j) *Calculation of number of units.* For purposes of determining under this section the number of units owned or operated by a PHA or IHA, and the relative modernization needs of PHAs and IHAs, HUD shall count as one unit each existing rental and section 23 bond-financed unit under the ACC, except that

it shall count as one-fourth of a unit each existing unit under the Turnkey III program. In addition, HUD shall count as one unit each existing unit under the Mutual Help program. New development units that are added to an PHA's or IHA's inventory will be added to the overall unit count so long as they are under ACC amendment and have reached DOFA by the first day in the FFY in which the formula is being run. Any increase in units (reaching DOFA and under ACC amendment) as of the beginning of the FFY shall result in an adjustment upwards in the number of units under the formula. New units reaching DOFA after this date will be counted for formula purposes as of the following FFY.

(k) *Demolition, disposition and conversion of units*—(1) *General*. Where an existing unit under an ACC is demolished, disposed of, or converted into a larger or smaller unit, including the substantial rehabilitation of a Mutual Help or Turnkey III unit, HUD shall not adjust the amount the PHA or IHA receives under the formula, unless more than one percent of the units are affected on a cumulative basis. Where more than one percent of the existing units are demolished, disposed of, or converted, HUD shall reduce the formula amount for the PHA or IHA over a 3-year period to reflect removal of the units from the ACC;

(2) *Determination of one percent cap*. In determining whether more than one percent of the units are affected on a cumulative basis, HUD will compare the units eligible for funding in the initial year under formula funding with the number of units eligible for funding for formula funding purposes for the current year, and shall base its calculations on the following:

(i) Increases in the number of units resulting from the conversion of existing units will be added to the overall unit count so long as they are under ACC amendment by the first day in the FFY in which the formula is being run;

(ii) Units which are lost as a result of demolition, disposition or conversion shall not be offset against units subsequently added to a PHA's or IHA's inventory;

(iii) For purposes of calculating the number of converted units, HUD shall

regard the converted size of the unit as the appropriate unit count (e.g., a unit that originally was counted as one unit under paragraph (j) of this section, but which later was converted into two units, shall be counted as two units under the ACC).

(3) *Phased-in reduction of units*. (i) *Reduction less than one percent*. If HUD determines that the reduction in units under paragraph (k)(2) of this section is less than one percent, the PHA or IHA will be funded as though no change had occurred;

(ii) *Reduction greater than one percent*. If HUD determines that the reduction in units under paragraph (k)(2) of this section is greater than one percent, the number of units on which formula funding is based will be the number of units reported as eligible for funding for the current program, plus two thirds of the difference between the initial year and the current year in the first year, plus one third of the difference in the second year, and at the level of the current year in the third year;

(iii) *Exception*. A unit which is conveyed under the Mutual Help or Turnkey III programs will result in an automatic (rather than a phased-in) reduction in the unit count. Paid-off Mutual Help or Turnkey III units continue to be counted until they are conveyed.

(4) *Subsequent reductions in unit count*. (i) Once a PHA's or IHA's unit count has been fully reduced under paragraph (k)(3)(ii) of this section to reflect the new number of units under the ACC, this new number of units will serve as the base for purposes of calculating whether there has been a one percent reduction in units on a cumulative basis;

(ii) A reduction in formula funding, based upon additional reductions to the number of a PHA's or IHA's units, will also be phased in over a three-year period, as described in paragraph (k)(2) of this section.

[57 FR 5571, Feb. 14, 1992, as amended at 59 FR 30477, June 13, 1994; 59 FR 44837, Aug. 30, 1994; 61 FR 8737, Mar. 5, 1996; 63 FR 46107, Aug. 28, 1998]

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§ 968.104 Reserve for emergencies and disasters.

(a) *Emergencies*—(1) *Eligibility for assistance.* A PHA (including a PHA that has been designated as mod troubled under PHMAP) may obtain funds at any time, for any eligible emergency work item as defined in § 968.305 (for CGP PHAs) or for any eligible emergency work item (described as emergency modernization in § 968.205) (for CIAP PHAs), from the reserve established under § 968.103(b). However, emergency reserve funds may not be provided to a CGP PHA that has the necessary funds available from any other source, including its annual formula allocation under § 968.103 (e) and (f), other unobligated modernization funds, and its replacement reserves. A PHA is not required to have an approved comprehensive plan under § 968.315 before it can request emergency assistance from this reserve. Emergency reserve funds may not be provided to a CIAP PHA unless it does not have the necessary funds available from any other source, including unobligated CIAP, and no CIAP modernization funding is available from HUD for the remainder of the fiscal year.

(2) *Procedure.* To obtain emergency funds, a PHA must submit a request, in a form to be prescribed by HUD, which demonstrates that without the requested funds from the set-aside, the PHA does not have adequate funds available to correct the conditions which present an immediate threat to the health or safety of the residents. HUD will immediately process a request for such assistance and, if it determines that the PHA's request meets the requirements under paragraph (a)(1) of this section, it shall approve the request, subject to the availability of funds in the reserve;

(3) *Repayment.* A CGP PHA that receives assistance for its emergency needs from the reserve under § 968.103(b) must repay such assistance from its future allocations of assistance, where available. For CGP PHAs, HUD shall deduct up to 50 percent of a PHA's succeeding year's formula allocation under § 968.103 (e) and (f) to repay emergency funds previously provided by HUD to the PHA. The remaining balance, if any, shall be deducted from a

PHA's succeeding years' formula allocations. A CIAP PHA is not required to repay assistance for its emergency needs from the reserve.

(b) *Natural and other disasters*—(1) *Eligibility for assistance.* A PHA (including a PHA that has been designated as mod troubled under PHMAP) may request assistance at any time from the reserve established under § 968.103(b) for the purpose of permitting the PHA to address a natural or other disaster. To qualify for assistance, the disaster must pertain to an extraordinary event affecting only one or a few PHAs, such as an earthquake or hurricane. Any disaster declared by the President (or which HUD determines would qualify for a Presidential declaration if it were on a larger scale) qualifies for assistance under this paragraph. A PHA may receive funds from the reserve regardless of the availability of other modernization funds or reserves, but only to the extent that its needs are in excess of its insurance coverage or other Federal assistance. A CGP PHA is not required to have an approved comprehensive plan under § 968.315 before it can request assistance from the reserve under § 968.103(b);

(2) *Procedure.* To obtain funding for natural or other disasters under § 968.103(b), a PHA must submit a request, in a form to be prescribed by HUD, which demonstrates that the PHA meets the requirements of paragraph (b)(1) of this section. HUD will immediately process a request for such assistance and, if it determines that the request meets the requirements under paragraph (b)(1) of this section, it shall approve the request, subject to the availability of funds in the reserve;

(3) *Repayment.* Funds provided to a PHA under § 968.103(b) for natural and other disasters are not required to be repaid.

[57 FR 5575, Feb. 14, 1992, as amended at 59 FR 44838, Aug. 30, 1994. Redesignated and amended at 61 FR 8738, Mar. 5, 1996]

§ 968.105 Definitions.

The terms *HUD* and *Public Housing Agency (PHA)* are defined in 24 CFR part 5.

Act. The United States Housing Act of 1937, as amended, (42 U.S.C. 1437 et seq.).

Annual contributions contract (ACC). A contract under the Act between HUD and the PHA containing the terms and conditions under which the Department assists the PHA in providing decent, safe, and sanitary housing for low-income families. The ACC must be in a form prescribed by HUD under which HUD agrees to provide assistance in the development, modernization, and/or operation of a low-income housing project under the Act, and the PHA agrees to develop, modernize, and operate the project in compliance with all provisions of the ACC and the Act, and all HUD regulations and implementing requirements and procedures.

CGP. The Comprehensive Grant Program, which provides modernization funds on a formula basis to PHAs with 250 or more public housing units.

CIAP. The Comprehensive Improvement Assistance Program, which provides modernization funds on a competitive basis to PHAs with fewer than 250 public housing units.

Development. The term *development* has the same meaning as that provided for *low-income housing project*, as that term is defined in section 3(b)(1) of the Act.

FFY. Federal fiscal year.

Force account labor. Labor employed directly by the PHA on either a permanent or a temporary basis. See § 968.120.

Hard costs. The physical improvement costs in development accounts 1450 through 1475 of the Low-Rent Housing Accounting Handbook 7510.1, as revised, which include: Account 1450 Site Improvements; Account 1460 Dwelling Structures; Account 1465.1 Dwelling Equipment—Nonexpendable; Account 1470 Nondwelling Structures; and Account 1475 Nondwelling Equipment.

Homebuyer agreement. A Turnkey III Homebuyer Ownership Opportunity Agreement.

Modernization funds. Funds derived from an allocation of budget authority for the purpose of funding physical and management improvements.

Modernization program. A PHA's program for carrying out modernization, as set forth in the approved CIAP budget or CGP Annual Statement.

Modernization project. The improvement of one or more existing public housing developments under a unique

number designated for that modernization program. For each modernization project, HUD and the PHA shall enter into an ACC amendment, requiring low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). The terms "modernization project number" and "comprehensive grant number" are used interchangeably.

Non-routine maintenance. Work items that ordinarily would be performed on a regular basis in the course of upkeep of property, but have become substantial in scope because they have been put off, and involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does qualify, but reconstruction, substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units does not qualify.

Partnership process. A specific and ongoing process that is designed to ensure that residents, resident groups, and the PHA work in a cooperative and collaborative manner to develop, implement and monitor the CIAP or CGP. At a minimum, a PHA shall ensure that the partnership process incorporates full resident participation in each of the required program components.

PHMAP. The Public Housing Management Assessment Program (PHMAP) is a process designed to allow HUD and the PHA to identify PHA management capabilities and deficiencies, and to lead to overall better management of the public housing program, in accordance with 24 CFR part 901.

Reasonable cost. Total unfunded hard cost needs for a development that do not exceed 90 percent of the computed Total Development Cost (TDC) for a new development with the same structure type and number and size of units in the market area.

Soft costs. The non-physical improvement costs which exclude any costs in

development accounts 1450 through 1475.

[54 FR 52689, Dec. 21, 1989, as amended at 56 FR 922, Jan. 9, 1991; 57 FR 5573, Feb. 14, 1992; 58 FR 13931, Mar. 15, 1993; 61 FR 5216, Feb. 9, 1996; 61 FR 8738, Mar. 5, 1996]

§ 968.108 Displacement, relocation, and real property acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, PHAs must assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* Residents who will not be required to move permanently, but who must relocate temporarily (e.g., to permit rehabilitation), shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent/utility costs; and

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary housing to be made available for the temporary period;

(iii) The terms and conditions under which the resident may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the project; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A “displaced person” (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24. A “displaced person” shall be advised of his/her rights under

the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a development is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the PHA’s determination concerning whether the person qualifies as a “displaced person,” or the amount of the relocation assistance for which the person is eligible, may file a written appeal of that determination with the PHA. A lower-income person who is dissatisfied with the PHA’s determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of PHA.* (1) The PHA shall certify that it will comply (i.e., provide assurance of compliance, as required by 49 CFR part 24) with the URA, the regulations at 49 CFR part 24, and the requirements of this section and shall ensure such compliance, notwithstanding any third party’s contractual obligation to the PHA to comply with these provisions.

(2) The PHA shall maintain records in sufficient detail to demonstrate compliance with these provisions. The PHA shall maintain data on the race, ethnic, gender, and handicap status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project, including any permanent move from the building/complex that is made:

(i) On or after the date of the “initiation of negotiations” (defined in § 968.108(h)), if the person is the resident of a dwelling and any one of the following three situations occurs:

(A) The resident has not been provided, before the move, a written notice offering the resident the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the total tenant payment, as determined under 24 CFR 913.107; or

(B) The resident is required to relocate temporarily, does not return to the building/complex, and either:

(1) The resident is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or

(2) Other conditions of the temporary relocation are not reasonable; or

(C) The resident is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable; or

(ii) Before the “initiation of negotiations,” if the PHA or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project;

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a “displaced person” (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the PHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the Annual Statement (CGP) or application (CIAP) and, before signing a lease and commencing occupancy, was provided writ-

ten notice of the project, its possible impact on the person (e.g., that the person may be displaced or temporarily relocated) and the fact that he or she would not qualify as a “displaced person” (or for assistance under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The PHA may ask HUD, at any time, to determine whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a resident who is displaced by rehabilitation or demolition, the term *initiation of negotiations* means 45 calendar days before (1) the issuance of the invitation for bids for the project or (2) the start of force account work, whichever is applicable.

(Approved by the Office of Management and Budget under OMB Control Number 2506-0121)

[58 FR 13931, Mar. 15, 1993, as amended at 61 FR 8738, Mar. 5, 1996]

§ 968.110 Other program requirements.

In addition to the Federal requirements set forth in 24 CFR part 5, the PHA shall comply with the following program requirements:

(a) *Nondiscrimination and equal opportunity.* The PHA shall comply with Title II of the Americans with Disabilities Act and 28 CFR part 35; section 504 of the Rehabilitation Act of 1973 and 41 CFR part 60-471; and the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and 24 CFR part 40.

(b) [Reserved]

(c) *Environmental clearance.* Before approving a proposed project, HUD will comply with the requirements of 24 CFR part 50, implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4332 et seq.) and related requirements of 24 CFR 50.4.

(d) *Flood insurance.* HUD will not approve for acquisition, construction, or improvement, a building located in an area that has been identified by the

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Federal Emergency Management Agency as having special flood hazards, unless the following conditions are met:

(1) Flood insurance on the building is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.); and

(2) The community in which the area is situated is participating in the National Flood Insurance Program in accord with 44 CFR parts 59–79, or less than one year has passed since FEMA notification regarding flood hazards.

(e) *Wage rates*—(1) *Davis-Bacon*. With respect to modernization work or contracts over \$2,000 (except for nonroutine maintenance work), all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed by the PHA or its contractors shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a–276a–5).

(2) *HUD-determined*. With respect to all nonroutine maintenance work or contracts, all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed by the PHA or its contractors shall be paid not less than the wages prevailing in the locality, as determined or adopted by HUD pursuant to section 12 of the United States Housing Act of 1937.

(3) *State*. Prevailing wage rates determined under State law are inapplicable under the circumstances set forth in § 965.101 of this chapter.

(f) *Technical wage rates*. All architects, technical engineers, draftsmen and technicians (other than volunteers under the conditions set out in 24 CFR part 70) who are employed in the development of a project shall be paid not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by HUD.

(g)–(j) [Reserved]

(k) *Lead-based paint poisoning prevention*. The PHA shall comply with the relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and im-

plementing regulations at part 35, subparts A, B, L, and R of this title.

(l) [Reserved]

(m) *Coastal barriers*. In accordance with the Coastal Barriers Resources Act, 16 U.S.C. 3501, no financial assistance under this part may be made available within the Coastal Barrier Resources System.

[54 FR 52689, Dec. 21, 1989, as amended at 56 FR 922, Jan. 9, 1991; 56 FR 15175, Apr. 15, 1991; 57 FR 5573, Feb. 14, 1992; 57 FR 14761, Apr. 22, 1992; 58 FR 13932, Mar. 15, 1993; 61 FR 5216, Feb. 9, 1996; 61 FR 8738, Mar. 5, 1996; 64 FR 33637, June 23, 1999; 64 FR 50229, Sept. 15, 1999]

§ 968.112 Eligible costs.

(a) *General*. A PHA may use financial assistance received under this part for the following eligible costs:

(1) For a CGP PHA, the eligible costs are:

(i) Undertaking activities described in its approved Annual Statement under § 968.325 and approved Five-Year Action Plan under § 968.315(e)(5);

(ii) Carrying out emergency work, whether or not the need is indicated in the PHA's approved Comprehensive Plan, including Five-Year Action Plan, or Annual Statement;

(iii) Funding a replacement reserve to carry out eligible activities in future years, subject to the restrictions set forth in paragraph (f) of this section;

(iv) Preparing the Comprehensive Plan and Five-Year Action Plan under § 968.315 and the Annual Submission under § 968.325, including reasonable costs necessary to assist residents to participate in a meaningful way in the planning, implementation and monitoring process; and

(v) Carrying out an audit, in accordance with 24 CFR part 44.

(2) For a CIAP PHA, the eligible costs are activities approved by HUD and included in an approved CIAP budget.

(b) *Demonstration of viability*. Except in the case of emergency work, a PHA shall only expend funds on a development for which the PHA has determined, and HUD agrees, that the completion of the improvements and replacements (for CGP PHAs, as identified in the Comprehensive Plan) will

reasonably ensure the long-term physical and social viability of the development at a reasonable cost (as defined in §968.105), or for essential non-routine maintenance needed to keep the property habitable until the demolition or disposition application is approved and residents are relocated.

(c) *Physical improvements.* Eligible costs include alterations, betterments, additions, replacements, and non-routine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in §968.115. These mandatory standards may be exceeded when a PHA (and HUD in the case of CIAP PHAs) determines that it is necessary or highly desirable for the long-term physical and social viability of the individual development. Development specific work includes work items that are modest in design and cost, but still blend in with the design and architecture of the surrounding community by including amenities, quality materials and design and landscaping features that are customary for the locality and culture. The Field Office has the authority to approve nondwelling space where such space is needed to administer, and is of direct benefit to, the public housing program. If demolition or disposition is proposed, a PHA shall comply with 24 CFR part 970. Additional dwelling space may be added to existing units.

(d) *Turnkey III developments*—(1) *General.* Eligible physical improvement costs for existing Turnkey III developments are limited to work items that are not the responsibility of the homebuyer families and that are related to health and safety, correction of development deficiencies, physical accessibility, energy audits and cost-effective energy conservation measures, or LBP testing, interim containment, professional risk assessment and abatement. In addition, management improvements are eligible costs.

(2) *Ineligible costs.* Routine maintenance or replacements, and items that are the responsibility of the homebuyer families are ineligible costs.

(3) *Exception for vacant or non-homebuyer-occupied Turnkey III units.* (i) Notwithstanding the requirements of paragraph (d)(1) of this section, a PHA may substantially rehabilitate a Turn-

key III unit whenever the unit becomes vacant or is occupied by a non-homebuyer family in order to return the unit to the inventory or make the unit suitable for homeownership purposes. A PHA that intends to use funds under this paragraph must identify in its CIAP application or CGP annual submission the estimated number of units proposed for substantial rehabilitation and subsequent sale. In addition, a PHA must demonstrate, for each of the Turnkey III units proposed to be substantially rehabilitated, that it has homebuyers who both are eligible for homeownership, in accordance with the requirements of 24 CFR part 904, and have demonstrated their intent to be placed into the unit.

(ii) Before a PHA may be approved for substantial rehabilitation of a unit under this paragraph, it must first deplete any Earned Home Payments Account (EHPA) or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit, and request the maximum amount of operating subsidy. Any increase in the value of a unit caused by its substantial rehabilitation under this paragraph shall be reflected solely by its subsequent appraised value, and not by an automatic increase in its selling price.

(e) *Demolition and conversion costs.* Eligible costs include:

(1) Demolition of dwelling units or non-dwelling facilities, where the demolition is approved by HUD under 24 CFR part 970, and related costs, such as clearing and grading the site after demolition and subsequent site improvement to benefit the remaining portion of the existing development; and

(2) Conversion of existing dwelling units to different bedroom sizes or to non-dwelling use.

(f) *Replacement reserve costs* (for CGP only). (1) Funding a replacement reserve to carry out eligible activities in future years is an eligible cost, subject to the following restrictions:

(i) Annual CGP funds are not needed for existing needs, as identified by the PHA in its needs assessments; or

(ii) A physical improvement requires more funds than the PHA would receive under its annual formula allocation; or

(iii) A management improvement requires more funds than the PHA may use under its 20% limit for management improvements (except as provided in paragraph (n)(2)(i) of this section), and the PHA needs to save a portion of its annual grant, in order to combine it with a portion of subsequent year(s) grants to fund the work item.

(2) The PHA shall invest replacement reserve funds so as to generate a return equal to or greater than the average 91-day Treasury bill rate.

(3) Interest earned on funds in the replacement reserve will not be added to the PHA's income in the determination of a PHA's operating subsidy eligibility, but must be used for eligible modernization costs.

(4) To the extent that its annual formula allocation and any unobligated balances of modernization funds are not adequate to meet emergency needs, a PHA must first use its replacement reserve, where funded, to meet emergency needs, before requesting funds from the reserve under § 968.104. Use of the replacement reserve is not required for emergencies if the amount that otherwise would be used from that reserve is an accumulation from application of the replacement housing factor (§ 968.103(e) (3) and (f)(4)) that is necessary so that replacement housing can be provided efficiently and effectively.

(5) A PHA is not required to use its replacement reserve for costs related to natural and other disasters.

(g) *Management improvement costs*—(1) *General*. Management improvements that are development-specific or PHA-wide in nature are eligible costs where needed to upgrade the operation of the PHA's developments, sustain physical improvements at those developments or correct management deficiencies. A PHA's ongoing operating expenses are ineligible management improvement costs. For CIAP PHAs, management improvements may be funded as a single work item.

(2) *Eligible costs*. Eligible costs include:

(i) *General management improvement costs*. Eligible costs include general management improvement costs, such as: management, financial, and accounting control systems of the PHA;

adequacy and qualifications of PHA personnel, including training; resident programs and services through the coordination of the provision of social services from tribal or local government or other public and private entities; resident and development security; resident selection and eviction; occupancy; rent collection; maintenance; and equal opportunity.

(ii) *Economic development costs*. Eligible costs include job training for residents and resident business development activities, for the purpose of carrying out activities related to the modernization-funded management and physical improvements. HUD encourages PHAs, to the greatest extent feasible, to hire residents as trainees, apprentices, or employees to carry out the modernization program under this part, and to contract with resident-owned businesses for modernization work.

(iii) *Resident management costs*. Eligible costs include technical assistance to a resident council or resident management corporation (RMC), as defined in part 964, in order to: determine the feasibility of resident management to carry out management functions for a specific development or developments; train residents in skills directly related to the operations and management of the development(s) for potential employment by the RMC; train RMC board members in community organization, board development, and leadership; and assist in the formation of an RMC.

(iv) *Resident homeownership costs*. Eligible costs are limited to the study of the feasibility of converting rental to homeownership units and the preparation of an application for conversion to homeownership or sale of units.

(v) *Preventive maintenance system*. Eligible costs include the establishment of a preventive maintenance system or improvement of an existing system. A preventive maintenance system must provide for regular inspections of building structures, systems and units and distinguish between work eligible for operating funds (routine maintenance) and work eligible for modernization funding (non-routine maintenance).

(h) *Drug elimination costs.* Eligible costs include drug elimination activities involving management or physical improvements, as specified by HUD.

(i) *Lead-based paint costs.* Eligible costs include lead-based paint activities, such as insurance coverage and cleanup and disposal, in accordance with part 35 of this title.

(j) *Administrative costs.* Administrative costs necessary for the planning, design, implementation and monitoring of the physical and management improvements are eligible costs and include the following:

(1) *Salaries.* The salaries of non-technical and technical PHA personnel assigned full-time or part-time to modernization are eligible costs only where the scope and volume of the work are beyond that which could be reasonably expected to be accomplished by such personnel in the performance of their non-modernization duties. A PHA shall properly apportion to the appropriate program budget any direct charges for the salaries of assigned full- or part-time staff (*e.g.*, to the CIAP, CGP or operating budget);

(2) *Employee benefit contributions.* PHA contributions to employee benefit plans on behalf of non-technical and technical PHA personnel are eligible costs in direct proportion to the amount of salary charged to the CIAP or CGP, as appropriate;

(3) *Preparation of CIAP or CGP required documents;*

(4) *Resident participation.* Eligible costs include those associated with ensuring the meaningful participation of residents in the development of the CIAP Application or the CGP Annual Submission and Comprehensive Plan and the implementation and monitoring of the approved modernization program; and

(5) *Other administrative costs,* such as telephone and facsimile, as specified by HUD.

(k) *Audit costs (CGP only).* Eligible costs are limited to the portion of the audit costs that are attributable to the modernization program.

(l) *Architectural/engineering and consultant fees.* Eligible costs include fees for planning, identification of needs, detailed design work, preparation of construction and bid documents and

other required documents, LBP professional risk assessments and testing, and inspection of work in progress.

(m) *Relocation costs.* Eligible costs include relocation and other assistance for permanent and temporary relocation, as a direct result of rehabilitation, demolition or acquisition for a modernization-funded activity, where this assistance is required by 49 CFR part 24 or §968.108.

(n) *Cost limitations—(1) CIAP costs.* (i) *Management improvement costs.* Management improvement costs shall not exceed a percentage of the CIAP funds available to a Field Office in a particular FFY, as specified by HUD.

(ii) *Planning costs.* Planning costs are costs incurred *before* HUD approval of the CIAP application *and* which are related to developing the CIAP application or carrying out eligible modernization planning, such as detailed design work, preparation of solicitations, and LBP professional risk assessment and testing. Planning costs may be funded as a single work item. If a PHA incurs planning costs without prior HUD approval, a PHA does so with the full understanding that the costs may not be reimbursed upon approval of the CIAP application. Planning costs shall not exceed 5 percent of the CIAP funds available to a Field Office in a particular FFY.

(2) *CGP costs.* (i) *Management improvement costs.* Notwithstanding the full fungibility of work items, a PHA shall not use more than a total of 20 percent of its annual grant for management improvement costs in account 1408, unless specifically approved by HUD or the PHA has been designated as both an over-all high performer and mod-high performer under the PHMAP.

(ii) *Administrative costs.* Notwithstanding the full fungibility of work items, a PHA shall not use more than a total of 10 percent of its annual grant on administrative costs in account 1410, excluding any costs related to lead-based paint or asbestos testing (whether conducted by force account employees or by a contractor), in-house architectural/engineering (A/E) work, or other special administrative costs required by State or local law, unless specifically approved by HUD.

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(3) *Program benefit.* Where the physical or management improvement, including administrative cost, will benefit programs other than Public Housing, such as Section 8 or local revitalization programs, eligible costs are limited to the amount directly attributable to the public housing program.

(4) *No duplication.* Any eligible cost for an activity funded by CIAP or CGP shall not also be funded by any other HUD program.

(o) *Ineligible costs.* Ineligible costs include:

- (1) Luxury improvements;
- (2) Indirect administrative costs (overhead), as defined in OMB Circular A-87;
- (3) Public housing operating assistance;
- (4) Direct provision of social services, through either force account or contract labor, from FFY 1996 and future FFYs funds, unless otherwise provided by law; and
- (5) Other ineligible activities, as specified by HUD.

(p) *Expanded eligibility for FFY 1995 and prior year modernization funds.* The FFY 1995 Rescissions Act expanded the eligible activities that may be funded with CIAP or CGP assistance provided from FFY 1995 and prior FFY funds. Such activities include, but are not limited to:

- (1) New construction or acquisition of additional public housing units, including replacement units;
- (2) Modernization activities related to the public housing portion of housing developments held in partnership, or cooperation with non-public housing entities; and
- (3) Other activities related to public housing, including activities eligible under the Urban Revitalization Demonstration (HOPE VI).

[61 FR 8738, Mar. 5, 1996, as amended at 62 FR 27126, May 16, 1997; 63 FR 46108, Aug. 28, 1998; 64 FR 50229, Sept. 15, 1999]

§ 968.115 Modernization and energy conservation standards.

All improvements funded under this part shall:

- (a) Meet the modernization standards as prescribed by HUD;
- (b) Incorporate cost-effective energy conservation measures, identified in

the PHA's most recently updated energy audit, conducted pursuant to part 965, subpart C;

(c) Where changing or installing a new utility system, conduct a life-cycle cost analysis, reflecting installation and operating costs; and

(d) Provide decent, safe, and sanitary living conditions in PHA-owned and PHA-operated public housing.

[61 FR 8740, Mar. 5, 1996]

§ 968.120 Force account.

(a) For both CIAP and CGP, a PHA may undertake the activities using force account labor, only where specifically approved by HUD in the CIAP budget or CGP Annual Statement, except no prior HUD approval is required where the PHA is designated as both an overall high performer and Modernization high performer under the PHMAP.

(b) If the entirety of modernization activity (including the planning and architectural design of the rehabilitation) is administered by the RMC, the PHA shall not retain for any administrative or other reason, any portion of the modernization funds provided, unless the PHA and the RMC provide otherwise by contract.

[61 FR 8740, Mar. 5, 1996]

§ 968.125 Initiation of modernization activities.

After HUD has approved the modernization program and entered into an ACC amendment with the PHA, a PHA shall undertake the modernization activities and expenditures set forth in its approved CIAP budget or CGP Annual Statement/Five-Year Action Plan in a timely, efficient and economical manner. All approved funding must be obligated within two years of approval and expended within three years of approval unless HUD approves a longer time period in the PHA's implementation schedule, as set forth in the CIAP budget or CGP Annual Statement. HUD may approve a longer time period for such reasons as the large size of the grant or the complexity of the work.

[61 FR 8741, Mar. 5, 1996]

§ 968.130 Fund requisitions.

To draw down modernization funds against the approved CIAP budget or

CGP Annual Statement, a PHA shall comply with requirements prescribed by HUD.

[61 FR 8741, Mar. 5, 1996]

§ 968.135 Contracting requirements.

In addition to the requirements specified in 24 CFR parts 5, 85, and 965, subpart A, and § 968.110(e), the following provisions apply:

(a) *Architect/engineer and other professional services contracts.* For CIAP only and notwithstanding 24 CFR 85.36(g), a PHA shall comply with the following HUD requirements:

(1) Where the proposed contract amount exceeds the HUD-established threshold, submit the contract for prior HUD approval before execution or issuance; or

(2) Where the proposed contract amount does not exceed the HUD-established threshold, certify that the scope of work is consistent with the originally approved modernization program, and that the amount is appropriate and does not result in the total HUD-approved CIAP budget being exceeded.

(b) *Assurance of completion.* For both CIAP and CGP and notwithstanding 24 CFR 85.36(h), for each construction contract over \$100,000, the contractor shall furnish a bid guarantee from each bidder equivalent to 5% of the bid price; and one of the following:

(1) A performance and payment bond for 100 percent of the contract price; or

(2) Separate performance and payment bonds, each for 50% or more of the contract price; or

(3) A 20% cash escrow; or

(4) a 25% irrevocable letter of credit.

(c) *Construction solicitations.* For CIAP only and notwithstanding 24 CFR 85.36(g), a PHA shall comply with HUD requirements to either:

(1) Where the estimated contract amount exceeds the HUD-established threshold, submit a complete construction solicitation for prior HUD approval before issuance; or

(2) Where the estimated contract amount does not exceed the HUD-established threshold, certify receipt of the required architect's/engineer's certification that the construction documents accurately reflect HUD-approved work and meet the moderniza-

tion and energy conservation standards and that the construction solicitation is complete and includes all mandatory items.

(d) *Contract awards.* (1) For CIAP only, a PHA shall obtain HUD approval of the proposed award of a contract if the contract work is inconsistent with the originally approved modernization program or the procurement meets the criteria set forth in 24 CFR 85.36(g)(2)(i) through (iv). In all other instances, a PHA shall make the award without HUD approval after the PHA has certified that:

(i) The solicitation and award procedures were conducted in compliance with State or local laws and Federal requirements;

(ii) The award does not meet the criteria in 24 CFR 85.36(g)(2)(i) through (iv) for prior HUD approval; and

(iii) The contractor is not on the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs;

(2) For CGP only, a PHA shall obtain HUD approval of the proposed award of a contract if the procurement meets the criteria set forth in 24 CFR 85.36(g)(2)(i) through (iv).

(e) *Contract modifications.* For CIAP only and notwithstanding 24 CFR 85.36(g), except in an emergency endangering life or property, a PHA shall comply with HUD requirements to either:

(1) Where the proposed contract modification exceeds the HUD-established threshold, submit the proposed modification for prior HUD approval before issuance; or

(2) Where the proposed contract modification does not exceed the HUD-established threshold, certify that the proposed modification is within the scope of the contract and that any additional costs are within the total HUD-approved CIAP budget amount.

(f) *Construction requirements.* Where indicated by poor performance, a PHA may be required to submit to HUD periodic progress reports and, for prior HUD approval, construction completion documents above a HUD-specified amount. For CGP only, a PHA is notified of additional construction requirements by a notice of deficiency or a corrective action order.

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(g) *Reward for high performers.* For CIAP only, if a PHA is both an overall high performer and a modernization high performer under the Public Housing Management Assessment Program (PHMAP), HUD will not establish thresholds, and the PHA is not required to obtain prior HUD approval, under paragraphs (a), (c), and (e) of this section.

[61 FR 8741, Mar. 5, 1996]

§ 968.140 On-site inspections.

It is the responsibility of the PHA, not HUD, to provide, by contract or otherwise, adequate and competent supervisory and inspection personnel during modernization, whether work is performed by contract or force account labor and with or without the services of an architect/engineer, to ensure work quality and progress.

[58 FR 13938, Mar. 15, 1993. Redesignated at 61 FR 8741, Mar. 5, 1996]

§ 968.145 Fiscal closeout.

(a) *Actual modernization cost certificate (AMCC).* Upon expenditure by the PHA of all funds, or termination by HUD of the activities funded in a modernization program, a PHA shall submit the AMCC, in a form prescribed by HUD, to HUD for review and approval for audit. After audit verification, HUD shall approve the AMCC.

(b) *Audit.* The audit shall follow the guidelines prescribed in 24 CFR part 44, Non-Federal Government Audit Requirements. If the pre-audit or post-audit AMCC indicates that there are excess funds, a PHA shall immediately remit the excess funds as directed by HUD. If the pre-audit or post-audit AMCC discloses unauthorized or ineligible expenditures, a PHA shall immediately take such corrective actions as HUD may direct.

[61 FR 8741, Mar. 5, 1996]

Subpart B—Comprehensive Improvement Assistance Program (For PHAs That Own or Operate Fewer Than 250 Units)

SOURCE: 61 FR 8741, Mar. 5, 1996, unless otherwise noted.

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§ 968.205 Definitions.

In addition to the definitions in § 968.105, the following definitions apply to this subpart:

Emergency Modernization (CIAP). A type of modernization program for a development that is limited to physical work items of an emergency nature that poses an immediate threat to the health or safety of residents or is related to fire safety, and that must be corrected within one year of CIAP funding approval.

Management capability. A PHA has management capability if it is:

(1) Not designated as Troubled under part 901 of this chapter, Public Housing Management Assessment Program (PHMAP); or

(2) Designated as Troubled, but has a reasonable prospect of acquiring management capability through CIAP-funded management improvements and administrative support. A Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under § 901.140 of this chapter or has obtained alternative oversight of its management functions.

Modernization capability. A PHA has modernization capability if it is:

(1) Not designated as Modernization Troubled under part 901 of this chapter, PHMAP; or

(2) Designated as Modernization Troubled, but has a reasonable prospect of acquiring modernization capability through CIAP-funded management improvements and administrative support, such as hiring staff or contracting for assistance. A Modernization Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under § 901.140 of this chapter or has obtained alternative oversight of its modernization functions. Where a PHA does not have a funded modernization program in progress, the Field Office shall determine whether the PHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

Other Modernization (modernization other than emergency). A type of modernization program for a development that includes one or more physical work items, where HUD determines that the physical improvements are necessary and sufficient to extend substantially the useful life of the development, and/or one or more development specific or PHA-wide management work items (including planning costs), and/or lead-based paint activities.

Work item. Any separately identifiable unit of work constituting a part of a modernization program.

[61 FR 8741, Mar. 5, 1996, as amended at 64 FR 50229, Sept. 15, 1999]

§ 968.210 Procedures for obtaining approval of a modernization program.

(a) *HUD notification.* After modernization funds for a particular FFY become available, HUD will notify PHAs of the time frame for submission of the CIAP application and other pertinent information.

(b) *Distribution of funding.* HUD will distribute the available funding under this subpart to every eligible PHA that responds to the notice issued pursuant to paragraph (a) of this section based on two equally-weighted factors: a PHA's share of the total number of units eligible for CIAP; and a PHA's share of the total number of bedrooms in units eligible for CIAP (with studio units counted as one-bedroom units). HUD will also provide a vacancy preference, consisting of an additional increment of funding, to PHAs that have modernization capability and demonstrate that at least 25% of their units are vacant, substandard units (where vacancies are not due to insufficient demand). A PHA has modernization capability if it has previously received CIAP funding and meets the requirements of *Modernization capability* as defined at § 968.205.

(c) *ACC amendment.* HUD and the PHA shall enter into an ACC amendment in order for the PHA to draw down modernization funds. The ACC amendment shall require low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of

the ACC). The PHA Executive Director, where authorized by the Board of Commissioners and permitted by State law, may sign the ACC amendment on behalf of the PHA. HUD has the authority to condition an ACC amendment (e.g., to require a PHA to hire a modernization coordinator or contract administrator to administer its modernization program).

(d) *Declaration of trust.* As HUD may require, the PHA shall execute and file for record a Declaration of Trust, as provided under the ACC, to protect the rights and interests of HUD throughout the 20-year period during which the PHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements.

[64 FR 33637, June 23, 1999]

§ 968.215 Resident and homebuyer participation.

A PHA shall establish a Partnership Process, as defined in § 968.105, to develop, implement and monitor the CIAP. Before submission of the CIAP application, a PHA shall consult with the residents, the resident organization, or the resident management corporation (see part 964, subpart C of this chapter) (herein referred to as the resident) of the development(s) being proposed for modernization, regarding its intent to submit an application and to solicit resident comments. A PHA shall give residents a reasonable opportunity to present their views on the proposed modernization and alternatives to it and shall give full and serious consideration to resident recommendations. A PHA shall respond in writing to the residents, indicating its acceptance or rejection of resident recommendations, consistent with HUD requirements and the PHA's own determination of efficiency, economy, and need. After HUD approval of the modernization program, a PHA shall inform the residents of the approved work items and its progress during implementation. Where HUD does not approve the modernization program, a PHA shall so inform the residents.

§ 968.225 Budget revisions.

(a) A PHA shall not incur any modernization cost in excess of the total

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HUD-approved CIAP budget. A PHA shall submit a budget revision, in a form prescribed by HUD, if the PHA plans to deviate from the originally approved modernization program, as it was competitively funded, by deleting or substantially revising approved work items or adding new work items that are unrelated to the originally approved modernization program, or to change the method of accomplishment from contract to force account labor, except as provided in paragraph (b)(4) of this section.

(b) In addition to the requirements of paragraph (a) of this section, a PHA shall comply with the following requirements:

(1) A PHA is not required to obtain prior HUD approval if, in order to complete the originally approved modernization program, the PHA needs to delete or revise approved work items or add new related work items consistent with the original modernization program. In such case, a PHA shall certify that the revisions are necessary to carry out the approved work and do not result in substantial changes to the competitively funded modernization program.

(2) A PHA shall not incur any modernization cost on behalf of any development that is not covered by the original CIAP application.

(3) Where there are funds leftover after completion of the originally approved modernization program, a PHA may, without prior HUD approval, use the remaining funds to carry out eligible modernization activities at developments covered by the original CIAP application.

(4) If a PHA is both an overall high performer and a modernization high performer under the Public Housing Management Assessment Program (PHMAP), the PHA is not required to obtain prior HUD approval to change the method of accomplishment from contract to force account labor.

§ 968.230 Progress reports.

For each six-month period ending March 31 and September 30, until completion of the modernization program or expenditure of all funds, a PHA shall submit to HUD a progress report, in a form prescribed by HUD. Where HUD

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determines that a PHA is having implementation problems, HUD may require more frequent reporting.

§ 968.235 Time extensions.

A PHA shall not obligate or expend funds after the obligation or expenditure deadline date approved by HUD in the original implementation schedule without a time extension, as follows:

(a) *Certification.* A PHA may extend an obligation or expenditure deadline date no later than 30 calendar days after the existing deadline date, without prior HUD approval, for a period commensurate with the delay, where the PHA certifies that the delay is due to reasons outside of the PHA's control, such as:

(1) Need to use leftover funds from a completed modernization program for additional work;

(2) Unforeseen delays in contracting or contract administration;

(3) Litigation; and

(4) Delay by HUD or other institutions. Delay by the PHA's staff or Board of Commissioners or a change in the Executive Director is not considered to be outside of the PHA's control.

(b) *Prior HUD approval.* Where a PHA is unable to meet an obligation or expenditure deadline date and the delay is due to reasons within the PHA's control, the PHA may request HUD approval of a time extension no later than 30 calendar days after the deadline date, to avoid recapture of funds. The request shall include an explanation of the delay, steps taken to prevent future delay, and the requested extension.

§ 968.240 HUD review of PHA performance.

HUD shall periodically review PHA performance in carrying out its approved modernization program to determine compliance with HUD requirements, the adequacy of a PHA's inspections as evidenced by the quality of work, and the timeliness of the work. HUD's review may be conducted either in-office or on-site. Where conducted in-office, a PHA shall forward any requested documents to HUD for post-review. Where deficiencies are noted, a PHA shall take such corrective actions as HUD may direct.

Subpart C—Comprehensive Grant Program (for PHAs That Own or Operate 250 or More Public Housing Units)

SOURCE: 57 FR 5575, Feb. 14, 1992, unless otherwise noted.

§ 968.305 Definitions.

In addition to the definitions in § 968.105, the following definitions apply to this subpart:

Action plan. A plan of the actions to be funded by a PHA over a period of five years (including a PHA's proposed allocation of its modernization funds to a reserve established under § 968.112(f)) to make the necessary physical and management improvements identified in the PHA's comprehensive plan. The plan shall be based upon HUD's and the PHA's best estimates of the funding reasonably expected to become available under the next five-year period. The action plan is updated annually to reflect a rolling five-year base. (See § 968.315(e)(5).)

Annual Statement. A work statement covering the first year of the Five-Year Action Plan and setting forth the major work categories and costs by development or PHA-wide for the current FFY grant, as well as a summary of costs by development account and implementation schedules for obligation and expenditure of the funds.

Annual Submission. A collective term for all documents which the PHA must submit to HUD for review and approval before accessing the current FFY grant funds. Such documents include the Annual Statement, Work Statements for years two through five of the Five-Year Action Plan, local government statement, PHA Board Resolution, materials demonstrating the partnership process and any other documents as prescribed by HUD.

Chief executive officer (CEO). The CEO of a unit of general local government means the elected official or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the CEO of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the

chairperson of a county commission or board in a county that has no elected county executive; or the official designated pursuant to law by the governing body of a unit of general local government (e.g., city manager).

Comprehensive plan. A plan prepared by a PHA and approved by HUD setting forth all of the physical and management improvement needs of the PHA and its public housing developments, indicating the relative urgency of needs and which includes the PHA's action plan, cost estimates, and required local government and PHA certifications. The comprehensive plan may be revised, as necessary, but must be revised at least every sixth year. (See § 968.315(e).)

Emergency work. Physical work items of an emergency nature, posing an immediate threat to the health or safety of residents, which must be completed within one year of CGP funding. Management improvements are not eligible as emergency work and, therefore, must be covered by the comprehensive plan (including the action plan) before the PHA may carry them out.

Fungibility. Fungibility is a concept which permits a PHA to substitute any work item from the latest approved Five-Year Action Plan to any previously approved CIAP budget or CGP Annual Statement and to move work items among approved budgets without prior HUD approval.

Improvement plan. A document developed by the PHA and approved by HUD specifying the actions to be taken, including timetables, to correct deficiencies identified as a result of an assessment, either under PHMAP or pursuant to HUD monitoring or audit findings.

Memorandum of Agreement (MOA). A binding contractual agreement between HUD and a troubled PHA, or a mod troubled PHA, which is designed to bring about significant, expeditious and long-lasting improvements in the PHA's management of its PHA-owned units. A MOA is required for each PHA designated as troubled or mod troubled.

Resident groups. Democratically elected resident groups such as PHA-

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wide resident groups, area-wide resident groups, single development resident groups, or RMCs.

Substantial rehabilitation. A modernization program for a development which provides for all physical and management improvements needed to meet the modernization and energy conservation standards and to ensure its long-term physical and social viability.

Work Statements. Work Statements cover the second through the fifth years of the Five-Year Action Plan and set forth the major work categories and costs by development or PHA-wide which the PHA intends to undertake in each year of years two through five. In preparing these Work Statements, the PHA shall assume that the current FFY formula amount will be available in each year of years two through five.

[57 FR 5575, Feb. 14, 1992, as amended at 58 FR 13931, Mar. 15, 1993; 59 FR 44837, Aug. 30, 1994; 61 FR 8744, Mar. 5, 1996]

§ 968.310 Determination of formula amount.

(a) *Submission of formula characteristics report*—(1) *Formula characteristics report*. In its first year of participation in the CGP, each PHA shall verify and provide data to HUD, in a form and at a time to be prescribed by HUD, concerning PHA and development characteristics so that HUD can develop the PHA's annual funding allocation in accordance with § 968.103 (e) and (f). If a PHA fails to submit to HUD the formula characteristics report by the prescribed deadline, HUD will use the data which it has available concerning PHA and development characteristics for purposes of calculating the PHA's formula share. After its first year of participation in the CGP, a PHA is not required to submit formula characteristics data to HUD, but is required to respond to data transmitted by HUD if there have been changes to its inventory from that previously reported, or where requested by HUD. On an annual basis, HUD will transmit to the PHA, the formula characteristics report which reflects the data that will be used to determine the PHA's formula share. The PHA will have at least 30 calendar days to review and advise HUD of errors in this HUD report. Nec-

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essary adjustments will be made to the PHA's data before the formula is run for the current FFY.

(2) *PHA Board Resolution.* The PHA must include with its formula characteristics report under paragraph (a)(1) of this section, a resolution adopted by the PHA Board of Commissioners approving the report, and certifying that the data contained in the formula characteristics report are accurate.

(b) *HUD notification of formula amount; appeal rights*—(1) *Formula amounts notification.* After HUD determines a PHA's formula allocation under § 968.103 (e) and (f) based upon the PHA, development, and community characteristics, it shall notify the PHA of its formula amount and provide instructions on the Annual Submission in accordance with §§ 968.315 and 968.325;

(2) *Appeal based upon unique circumstances.* A PHA may appeal in writing HUD's determination of its formula amount within 60 calendar days of the date of HUD's determination on the basis of "unique circumstances." The PHA must indicate what is unique, and specify the manner in which it is different from all other PHAs participating in the CGP, and provide any necessary supporting documentation. HUD shall render a written decision on an PHA's appeal under this paragraph within 60 calendar days of the date of its receipt of the PHA's request for an appeal. HUD shall publish in the FEDERAL REGISTER a description of the facts supporting any successful appeals based upon "unique circumstances." Any adjustments resulting from successful appeals in a particular FFY under this paragraph shall be made from subsequent years' allocation of funds under this part;

(3) *Appeal based upon error.* A PHA may appeal in writing HUD's determination of its formula amount within 60 calendar days of the date of HUD's determination on the basis of an error. The PHA may appeal on the basis of error the correctness of data in the formula characteristics report. The PHA must describe the nature of the error, and provide any necessary supporting documentation. HUD shall respond to the PHA's request within 60 calendar days of the date of its receipt of the

PHA's request for an appeal. Any adjustment resulting from successful appeals in a particular FFY under this paragraph shall be made from subsequent years' allocation of funds under this part;

(c) *Reduced formula allocation for PHAs designated as mod troubled under PHMAP*—(1) *Notification*. After a PHA is designated as a mod troubled agency under PHMAP (24 CFR part 901), HUD shall inform the PHA that its funding may be limited under this subpart because of its designation as a mod troubled PHA. HUD shall also provide the PHA with information concerning the PHA's funding levels for CGP, CIAP and MROP for each of the preceding three FFYs for purposes of determining the PHA's reduced formula allocation, in accordance with paragraph (c)(2)(ii) of this section. In addition, HUD will provide the PHA with information on its full formula allocation under §968.103 (e) and (f), and the amount which represents 25 percent of the difference between the average amounts provided to the PHA in each of the preceding three FFYs and its full formula allocation.

(2) *Calculation of funding for mod troubled PHAs*. HUD shall calculate the funding level for mod troubled PHAs in accordance with paragraph (c)(1) of this section in the following manner:

(i) The average of the amount that the mod troubled PHA received for modernization activities under this part, and for Major Reconstruction of Obsolete Projects (MROP), for each of the preceding three FFYs, which average shall be adjusted to take into account changes in the cost of rehabilitating property based upon the Means Construction Cost Index; plus

(ii) Twenty five percent of the difference between the amount determined under paragraph (c)(1)(i) of this section, and the amount that would have been allocated to the PHA for the FFY if it were not designated as a mod troubled PHA.

(3) *Right of appeal*. The notice under paragraph (c)(1) of this section shall also specify that a PHA may petition HUD within 30 calendar days of its receipt of HUD's notice to increase the amount of its fund allocation. HUD shall determine whether to increase

the amount of assistance to be provided a PHA under this paragraph based upon the PHA's demonstrated progress in meeting goals and targets set forth in the PHA's Memorandum of Agreement (MOA) under PHMAP, and toward achieving satisfactory performance under the mod troubled indicator/standard under PHMAP. In its appeal request, a PHA must specify how it is achieving or making progress toward achieving the goals and objectives set forth in the MOA. The request must be submitted to HUD within 30 calendar days of the date of HUD's notice under this paragraph. HUD shall render a decision in writing on the PHA's request within 60 calendar days of the date of its receipt of the PHA's appeal and any supporting documentation.

(4) *Maximum allowable allocation to mod troubled PHAs*. The maximum amount that HUD may provide to a PHA under this paragraph is the amount that would have been allocated to the PHA for the FFY if it had not been designated as a mod troubled PHA under PHMAP. Where the full formula allocation is less than the average of funding received by the PHA for modernization and MROP for each of the preceding three FFYs, the PHA will receive its full formula amount, and not its average funding level for the preceding three FFYs, plus 25 percent of the difference between that figure and its full formula amount.

(5) *Reallocation of funds withheld from mod troubled PHAs*. Any amounts which are not provided to a PHA under paragraph (c)(1) of this section because the PHA is designated as a mod troubled agency under PHMAP, shall be reallocated by HUD to other PHAs under this subpart which are not designated as either troubled or mod troubled agencies under PHMAP, and to IHAs under 24 CFR part 950 (subpart I) which are not determined to be high risk under §950.135 of this chapter, the ACA, and the Field Office Monitoring of IHAs Handbook. Such funds shall be reallocated in the next FFY based upon the relative needs of these PHAs and IHAs, as determined under the formula.

(6) *Credits for PHAs designated as mod troubled*—(i) *Accrual of credits*. A PHA that has received a reduced formula allocation under paragraph (c)(1) of this

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section because it was designated as a mod troubled agency under PHMAP may accrue credits under this paragraph, for up to three consecutive FFYs, representing the difference between:

(A) The amount the PHA would have been allocated for the FFY under § 968.103(e) and (f) if it were not designated as a mod troubled PHA under PHMAP; and

(B) The reduced funding amount actually provided to the PHA under paragraph (c)(2) of this section because it was designated as a mod troubled PHA under PHMAP.

(ii) *Failure to remove mod troubled designation.* After a three-year period during which the mod troubled PHA has accrued credits under paragraph (c)(6)(i) of this section, the credits accrued by the PHA shall be:

(A) Decreased by 10 percent of the total accumulated credits if the PHA's designation as a mod troubled agency under PHMAP is not removed before the end of the first FFY following the three-year accrual period;

(B) Decreased by an additional 20 percent of the original total accumulated credits if the PHA's designation as a mod troubled agency under PHMAP is not removed before the end of the second FFY following the three-year accrual period;

(C) Decreased by an additional 30 percent of the original total accumulated credits if the PHA's designation as a mod troubled agency under PHMAP is not removed before the end of the third FFY following the three-year accrual period; and

(D) Eliminated if the PHA's designation as a mod troubled agency under PHMAP is not removed before the end of the fourth FFY following the three-year accrual period.

(iii) *Obtaining credits.* HUD shall reserve under § 968.103(c) up to five percent of the total formula funds available for allocation in any FFY for the purpose of providing PHAs that were formerly designated as mod troubled PHAs under PHMAP with additional assistance after HUD determines that a PHA is no longer a mod troubled agency. HUD shall make the determination that a PHA is no longer a mod troubled agency based upon its achieving satis-

factory performance under the mod indicator/standard that was initially used to designate the agency as mod troubled under PHMAP. The additional assistance shall be provided to the formerly mod troubled PHA in the FFY following the year in which the PHA is removed from the mod troubled list. Such assistance shall be provided to the PHA in addition to a PHA's regular formula allocation under § 968.103(e) and (f), and shall consist of:

(A) The total amount of credits accumulated by the PHA under paragraph (c)(6)(i) of this section; minus

(B) Any reductions under paragraph (c)(6)(ii) of this section to the total accumulated credits, based upon the length of time that the PHA has taken to remove its mod troubled designation; and

(C)(1) Adjusted by HUD to take into account the PHA's ability to expeditiously expend the accrued credit amounts. HUD shall consult with the PHA to determine the rate at which the PHA shall be provided access to its credits under this section. As a general guideline, HUD intends to provide a PHA with 10% of its accrued credits in the first year; an additional 20% of its accrued credits in the second year; an additional 30% of its accrued credits in the third year; and the remaining 40% of its accrued credits in the fourth year;

(2) In any FFY where formerly mod troubled PHAs are entitled to credits exceeding the five percent reserve, HUD shall apply a pro rata reduction for each formerly mod troubled PHA for such FFY. A PHA shall remain entitled to receive its outstanding balance of credits, including any credits not actually received because of such pro rata reduction, in future FFYs, depending upon the availability of funds in the set-aside under § 968.103(c).

(Approved by the Office of Management and Budget under control number 2577-0157)

[57 FR 5575, Feb. 14, 1992, as amended at 59 FR 44839, Aug. 30, 1994. Redesignated and amended at 61 FR 8744, Mar. 5, 1996]

§ 968.315 Comprehensive Plan (including five-year action plan).

(a) *Submission.* As soon as possible after modernization funds first become

available for allocation under this subpart, HUD shall notify PHAs in writing of their formula amount. For planning purposes, PHAs may use the amount they received under CGP in the prior year in developing their comprehensive plan, or they may wait for the annual HUD notification of formula amount under §968.310(b)(1).

(b)(1) *Resident participation.* A PHA is required to develop, implement, monitor and annually amend portions of its comprehensive plan in consultation with residents of the developments covered by the comprehensive plan. In addition, the PHA shall consult with resident management corporations (RMCs) to the extent that an RMC manages a development covered by the comprehensive plan. The PHA, in partnership with the residents, must develop and implement a process for resident participation that ensures that residents are involved in a meaningful way in all phases of the CGP. Such involvement shall involve implementing the Partnership Process as a critical element of the CGP.

(2) *Establishment of Partnership Process.* The PHA, in partnership with the residents of the developments covered by the plan (and which may include resident leaders, resident councils, resident advisory councils/boards, and RMCs) must establish a Partnership Process to develop and implement the goals, needs, strategies and priorities identified in the comprehensive plan. After residents have organized to participate in the CGP, they may decide to establish a volunteer advisory group of experts in various professions to assist them in the CGP Partnership Process. The Partnership Process shall be designed to achieve the following:

(i) To ensure that residents are fully briefed and involved in developing the content of, and monitoring the implementation of, the comprehensive plan including, but not limited to, the physical and management needs assessments, viability analysis, Five-Year Action Plan, and Annual Statement. If necessary, the PHA shall develop and implement capacity building strategies to ensure meaningful resident participation in CGP. Such technical assistance efforts for residents are eligible

management improvement costs under CGP;

(ii) To enable residents to participate, on a PHA-wide or area-wide basis, in ongoing discussions of the comprehensive plan and strategies for its implementation, and in all meetings necessary to ensure meaningful participation.

(3) *Public notice.* Within a reasonable amount of time before the advance meeting for residents under paragraph (b)(4) of this section and the public hearing under paragraph (b)(5) of this section, the PHA shall provide public notice of the advance meeting and the public hearing in a manner determined by the PHA that ensures notice to all duly elected resident councils.

(4) *Advance meeting for residents.* The PHA shall hold, within a reasonable amount of time before the public hearing under paragraph (b)(5) of this section, a meeting for residents and duly elected resident councils at which the PHA shall explain the components of the comprehensive plan. The meeting shall be open to all residents and duly elected resident councils.

(5) *Public hearing.* The PHA shall hold at least one public hearing, and any appropriate number of additional hearings, to present information on the comprehensive plan/annual submission and the status of prior approval programs. The public hearing shall provide ample opportunity for residents, local government officials, and other interested parties to express their priorities and concerns. The PHA shall give full consideration to the comments and concerns of residents, local government officials, and other interested parties.

(c) *Local government participation.* A PHA shall consult with and provide information to appropriate local government officials with respect to the development of the comprehensive plan to ensure that there is coordination between the actions taken under the consolidated plan (see 24 CFR part 91) for project and neighborhood improvements where public housing units are located or proposed for construction and/or modernization and improvement and to coordinate meeting public and human service needs of the public and assisted housing projects and their

residents. In the case of a PHA with developments in multiple jurisdictions, the PHA may meet this requirement by consulting with an advisory group representative of all the jurisdictions. At a minimum, such consultation must include providing such officials with:

(1) Advance written notice of the public hearing required under paragraph (b)(5) of this section;

(2) A copy of the summary of total preliminary estimated costs to address physical needs by each development and management/operations needs PHA-wide and a specific description of the PHA's process for maximizing the level of participation by residents and a summary of the general issues raised on the plan by residents and others during the public comment process and the PHA's response to the general issues. PHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the PHA's files and made available to residents, resident organizations, and other interested parties upon request; and

(3) An opportunity to express their priorities and concerns to ensure due consideration in the PHA's planning process;

(d) *Participation in coordinating entities.* To the extent that coordinating entities are set up to plan and implement the consolidated plans (under 24 CFR part 91), the PHA shall participate in these entities to ensure coordination with broader community development strategies.

(e) *Contents of comprehensive plan.* The comprehensive plan shall identify all of the physical and management improvements needed for a PHA and all of its developments, and that represent needs eligible for funding under § 968.112. The plan also shall include preliminary estimates of the total cost of these improvements. The plan shall set forth general strategies for addressing the identified needs, and highlight any special strategies, such as major redesign or partial demolition of a development, that are necessary to ensure the long-term physical and social viability of the development. Where long-term physical and social viability of the development is dependent upon revitalization of the surrounding neighborhood in the provision of or co-

ordination of public services, or the consolidation or coordination of drug prevention and other human service initiatives, the PHA shall identify these needs and strategies. In addition, the PHA shall identify the funds or other resources in the consolidated plan that are to be used to help address these needs and strategies and the activities in the comprehensive plan that strengthen the consolidated plan. Each comprehensive plan shall contain the following elements:

(1) *Executive summary.* A PHA shall include as part of its comprehensive plan an executive summary to facilitate review and comprehension by development residents and by the public. The executive summary shall include the following:

(i) A summary of total preliminary estimated costs to address physical needs by each development and PHA-wide physical and management needs; and

(ii) A specific description of the PHA's process for maximizing the level of participation by residents during the development, implementation and monitoring of the Comprehensive Plan, a summary of the general issues raised on the plan by residents and others during the public comment process and the PHA's response to the general issues. PHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the PHA's files and made available to residents, duly elected resident councils, and other interested parties, upon request;

(2) *Physical needs assessment*—(i) *Requirements.* The physical needs assessment identifies all of the work that a PHA would need to undertake to bring each of its developments up to the modernization and energy conservation standards, as required by the Act, to comply with the lead-based paint requirements in part 35, subparts A, B, L, and R of this title, and to comply with other program requirements under § 968.110. The physical needs assessment is completed without regard to the availability of funds, and shall include the following:

(A) A brief summary of the physical improvements necessary to bring each such development to a level at least equal to applicable HUD standards

with respect to modernization standards, energy conservation and life-cycle cost effective performance standards, lead-based paint testing and abatement standards. This summary must indicate the relative urgency of need. If the PHA has no physical improvement needs at a particular development at the time it completes its comprehensive plan, it must so indicate. Similarly, if the PHA intends to demolish, partially demolish, convert, or dispose of a development (or units within a development) it must so indicate in the summary of physical improvements;

(B) The replacement needs of equipment systems and structural elements that will be required to be met (assuming routine and timely maintenance is performed) during the period covered by the action plan;

(C) A preliminary estimate of the cost to complete the physical work;

(D) Any physical disparities between buildings occupied predominantly by one racial or ethnic group and, in such cases, the physical improvements required to correct the conditions; and

(E) In addition, with respect to vacant or non-homebuyer occupied Turnkey III units, the estimated number of units that the PHA is proposing for substantial rehabilitation and subsequent sale, in accordance with §968.112(d)(3).

(ii) *Source of data.* The PHA shall identify in its needs assessment the sources from which it derived data to develop the physical needs assessment under this paragraph (e)(2) and shall retain such source documents in its files;

(3) *Management needs assessment*—(i) *Requirements.* The plan shall include a comprehensive assessment of the improvements needed to upgrade the management and operation of the PHA and of each viable development so decent, safe, and sanitary living conditions will be provided. The management needs assessment shall include the following, with the relative urgency of need indicated:

(A) An identification of the most current needs related to the following areas (to the extent that any of these needs is addressed in a HUD-approved memorandum of agreement or improvement plan, the PHA may simply

include a cross-reference to these documents):

(1) The management, financial, and accounting control systems of the PHA;

(2) The adequacy and qualifications of personnel employed by the PHA in its management and operation, for each significant category of employment;

(3) The adequacy and efficacy of:

(i) Resident programs and services;

(ii) Resident and development security;

(iii) Resident selection and eviction;

(iv) Occupancy;

(v) Maintenance;

(vi) Resident management and resident capacity building programs;

(vii) Resident opportunities for employment and business development and other self-sufficiency opportunities for residents; and

(viii) Homeownership opportunities for residents;

(B) Any additional deficiencies identified through PHMAP, audits and HUD monitoring reviews that are not addressed under paragraph (e)(3)(i)(A) of this section. To the extent that any of these is addressed in a HUD-approved memorandum of agreement or improvement plan, the PHA may include a cross-reference to these documents;

(C) Any other management and operations needs that the PHA wants to address at the PHA-wide or development level; and

(D) A PHA-wide preliminary cost estimate for addressing all the needs identified in the management needs assessment, without regard to the availability of funds;

(ii) *Sources of funds.* The PHA shall identify in its needs assessment the sources from which it derived data to develop the management needs assessment under this paragraph (e)(3) and shall retain such source documents in its files;

(4) *Demonstration of long-term physical and social viability.* (i) *General.* The plan shall include, on a development-by-development basis, an analysis of whether completion of the improvements and replacements identified under paragraphs (e)(2) and (e)(3) of this section will reasonably ensure the long-term physical and social viability, including

achieving structural/system soundness and full occupancy, of the development at a reasonable cost. For cost reasonableness, the PHA shall determine whether the unfunded hard costs satisfy the definition of “reasonable cost.” Where the PHA wishes to fund a development, for other than emergencies, where hard costs exceed that reasonable cost, the PHA shall submit written justification to the Field Office. If the Field Office agrees with the PHA’s request, the Field Office shall forward its recommendation to Headquarters for final decision. Where the estimated per unit unfunded hard cost is equal to or less than the per unit TDC for the smallest bedroom size at the development, no further computation of the TDC limit is required. The PHA shall keep documentation in its files to support all cost determinations. The Field Office will review cost reasonableness as part of its review of the annual submission and the performance and evaluation report. As necessary, HUD will review the PHA’s documentation in support of its cost reasonableness, taking into account broader efforts to revitalize the neighborhoods in which the development is located;

(ii) *Determination of non-viability.* Where a PHA’s analysis of a development under paragraph (e) of this section establishes that completion of the identified improvements and replacements will not result in the long-term physical and social viability of the development at a reasonable cost, the PHA shall not expend CGP funds for the development, except for emergencies and essential non-routine maintenance necessary to maintain habitability until residents can be relocated. The PHA shall specify in its comprehensive plan the actions it proposes to take with respect to the non-viable development (e.g., demolition or disposition under 24 CFR part 970);

(5) *Five-year action plan.* (i) *General.* The comprehensive plan shall include a rolling five-year action plan to carry out the improvements and replacements (or a portion thereof) identified under paragraphs (e)(2) and (e)(3) of this section. In developing its five-year action plan, the PHA shall assume that the current year funding or formula

amount will be available for each year of its five-year action plan, whichever the PHA is using for planning purposes, plus the PHA’s estimate of the funds that will be available from other sources, such as state and local governments. All activities specified in a PHA’s five-year action plan are contingent upon the availability of funds;

(ii) *Requirements.* Under the action plan, a PHA must indicate how it intends to use the funds available to it under the CGP to address, over a five-year period, the deficiencies (or a portion of the deficiencies) identified in its physical and management needs assessments, as follows:

(A) *Physical condition.* With respect to the physical condition of a PHA’s developments, a PHA must indicate in its action plan how it intends to address, over a five-year period, the deficiencies (or a portion of the deficiencies) identified in its physical needs assessment so as to bring each of its developments up to a level at least equal to the modernization and energy conservation standards. This includes specifying the work to be undertaken by the PHA in major work categories (e.g., kitchens, electrical systems, etc.); establishing priorities among the major work categories by development and year, based upon the relative urgency of need; and estimating the cost of each of the identified major work categories. In developing its action plan, a PHA shall give priority to the following:

(1) Activities required to correct emergency conditions;

(2) Activities required to meet statutory or other legally mandated requirements (e.g., compliance with a court-ordered desegregation plan or voluntary compliance agreement);

(3) Activities required to meet the needs identified in the Section 504 needs assessment within the regulatory timeframe; and

(4) Activities required to complete lead-based paint testing and abatement requirements;

(B) *Management and operations.* A PHA must address in its action plan the management and operations deficiencies (or a portion of the deficiencies) identified in its management needs assessment, as follows:

(1) With respect to the management and operations needs of the PHA, the PHA must identify how it intends to address with CGP funds, if necessary, the deficiencies (or a portion thereof) identified in its management needs assessment, including work identified through PHMAP, audits, HUD monitoring reviews, and self-assessments. The action plan must indicate the relative urgency of need;

(2) A preliminary PHA-wide cost estimate, by major work category.

(iii) *Procedure for maintaining current five-year action plan.* The PHA shall maintain a current five-year action plan by annually amending its five-year action plan, in conjunction with the annual submission;

(6) *Local government statement.* The comprehensive plan shall include a statement signed by the chief executive officer of the unit of general local government (or, in the case of a PHA with developments in multiple jurisdictions, from the CEO of each such jurisdiction) certifying to the following:

(i) The PHA developed the comprehensive plan/five-year action plan or amendments thereto in consultation with officials of the appropriate governing body and with development residents covered by the comprehensive plan/five-year action plan, in accordance with the requirements of paragraphs (b) and (c) of this section;

(ii) The comprehensive plan/five-year action plan or amendments thereto are consistent with the appropriate governing body's assessment of its low income housing needs (as evidenced by its consolidated plan under 24 CFR part 91, if applicable), and that the appropriate governing body will cooperate in providing resident programs and services; and

(iii) The PHA's proposed drug elimination activities are coordinated with, and supportive of, local drug elimination strategies and neighborhood improvement programs, if applicable; and

(7) *PHA resolution.* The plan shall include a resolution, in a form prescribed by HUD, adopted by the PHA Board of Commissioners, and signed by the Board Chairman of the PHA, approving the comprehensive plan or any amendments.

(f) *Amendments to the comprehensive plan—(1) Extension of time for performance.* A PHA shall have the right to amend its comprehensive plan (including the action plan) to extend the time for performance whenever HUD has not provided the amount of assistance set forth in the comprehensive plan or has not provided the assistance in a timely manner;

(2) *Amendments to needs assessments.* The PHA shall amend its plan by revising its needs assessments whenever it proposes to carry out activities in its five-year action plan or annual statement that are not reflected in its current needs assessments (except in the case of emergencies). The PHA may propose an amendment to its needs assessments, in connection with the submission of its annual submission (see §968.325) or at any other time. These amendments shall be reviewed by HUD in accordance with §968.320.

(3) *Six-year revision of comprehensive plan.* Every sixth year following the initial year of participation, the PHA shall submit to HUD, with its annual submission, a complete update of its comprehensive plan. A PHA may elect to revise some or all parts of the comprehensive plan more frequently.

(4) *Annual revision of five-year action plan.* Annually, the PHA shall submit to HUD, with its annual submission, an update of its five-year action plan, eliminating the previous year and adding an additional year. The PHA shall identify changes in work categories (other than those included in the new fifth year) from the previous year five-year action plan when making this annual submission.

(5) *Required submissions.* Any amendments to the comprehensive plan under this section must be submitted with the PHA resolution under §968.315(e)(7).

(g) *Prerequisite for receiving assistance—(1) Prohibition of assistance.* No financial assistance, except for emergency work to be funded under §§968.103(b) and 968.112(a)(1)(ii), and for modernization needs resulting from disasters under §968.103(b), may be made available under this subpart unless HUD has approved a comprehensive plan submitted by the PHA that meets the requirements of this section.

A PHA that has failed to obtain approval of its comprehensive plan by the end of the FFY shall have its formula allocation for that year (less any formula amounts provided to the PHA for emergencies) added to the subsequent year's appropriation of funds for grants under this part. HUD shall allocate such funds to PHAs and IHAs participating in the CGP in accordance with the formula under § 968.103(e) and (f) in the subsequent FFY. A PHA that elects in any FFY not to participate in the CGP may participate in the CGP in subsequent FFYs;

(2) *Requests for emergency assistance.* A PHA may receive funds from its formula allocation to address emergency modernization needs where HUD has not approved a PHA's comprehensive plan. To request such assistance, a PHA shall submit to HUD a request for funds in such form as HUD may prescribe, including any documentation necessary to support its claim that an emergency exists. HUD shall review the request and supporting documentation to determine if it meets the definition of "emergency work" as set forth in § 968.305.

(Approved by the Office of Management and Budget under control number 2577-0157)

[61 FR 8744, Mar. 5, 1996, as amended at 64 FR 50229, Sept. 15, 1999]

§ 968.320 HUD review and approval of comprehensive plan (including five-year action plan).

(a) *Submission of comprehensive plan.*

(1) Upon receipt of a comprehensive plan from a PHA, HUD shall determine whether:

(i) The plan contains each of the required components specified at § 968.315(e); and

(ii) Where applicable, the PHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate PHA performance, audit findings, or civil rights compliance findings;

(2) *Acceptance for review.* If the PHA has submitted a comprehensive plan (including the action plan) which meets the criteria of paragraph (a)(1) of this section, HUD shall accept the comprehensive plan for review, within 14 calendar days of its receipt in the field

office. The PHA shall be notified in writing that the comprehensive plan has been accepted by HUD for review, and that the 75-day review period is proceeding;

(3) *Time period for review.* A comprehensive plan that is accepted by HUD for review shall be considered to be approved unless HUD notifies the PHA in writing, postmarked within 75 calendar days of the date of HUD's receipt of the comprehensive plan for review, that HUD has disapproved the plan. HUD shall not disapprove a comprehensive plan on the basis that it cannot complete its review within the 75-day deadline;

(4) *Rejection of comprehensive plan.* If a PHA has submitted a comprehensive plan (including the action plan), which does not meet the requirements of paragraph (a)(1) of this section, HUD shall notify the PHA within 14 calendar days of its receipt that HUD has rejected the plan for review. In such case, HUD shall indicate the reasons for rejection, the modifications required to qualify the comprehensive plan for HUD review, and the deadline date for receipt of any modifications.

(b) *HUD approval of comprehensive plan (including action plan).* (1) A comprehensive plan (including the action plan) that is accepted by HUD for review in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the PHA in writing, postmarked within 75 days of the date of HUD's receipt of the comprehensive plan for review, that HUD has disapproved the plan, indicating the reasons for disapproval, and the modifications required to make the comprehensive plan approvable. The PHA must re-submit the comprehensive plan to HUD, in accordance with the deadline established by HUD, which may allow up to 75 calendar days before the end of the FFY for HUD review. If the revised plan is disapproved by HUD following its resubmission, or if the PHA fails to resubmit by the deadline established by HUD, any funds that would have been allocated to the PHA shall be added to the subsequent year's appropriation of funds for grants under this part. HUD shall allocate such funds to PHAs and IHAs participating in the CGP in accordance with

the formula under § 968.103(e) and (f). HUD shall not disapprove a comprehensive plan on the basis that the Department cannot complete its review under this section within the 75-day deadline;

(2) HUD shall approve the Comprehensive Plan except where it makes a determination in accordance with one or more of the following:

(i) Comprehensive Plan is incomplete in significant matters;

(ii) Identified needs are plainly inconsistent with facts and data;

(A) Identified physical improvements and replacements are inadequate;

(B) Identified management improvements are inadequate;

(C) Proposed physical and management improvements fail to address identified needs;

(iii) Action plan is plainly inappropriate to meeting identified needs;

(iv) Inadequate demonstration of long-term viability at reasonable cost; and

(v) Contradiction of local government certification or PHA resolution.

(c) *Effect of HUD approval of Comprehensive Plan.* After HUD approves the Comprehensive Plan (including the Five-Year Action Plan), or any amendments to the plan, it shall be binding upon HUD and the PHA, until such time as the PHA submits, and HUD approves, an amendment to its plan. The PHA is expected to undertake the work set forth in the Annual Statement. However, the PHA may undertake any of the work identified in any of the other four years of the latest approved Five-Year Action Plan, current approved Annual Statement or previously approved CIAP budgets, without further HUD approval. Actual uses of the funds are to be reflected in the PHA annual Performance and Evaluation Report for each grant. See § 968.330. The PHA is encouraged to inform the residents of significant changes (such as changes in scope of work or whenever it moves items within the approved Five-Year Action Plan). Documentation of that information shall be retained in PHA files. If HUD determines as a result of an audit or monitoring findings that a PHA has provided false or substantially inaccurate data in its Comprehensive Plan/Annual Submission or has circumvented the intent of

the program, HUD may condition the receipt of assistance, in accordance with § 968.335. Moreover, in accordance with 18 U.S.C. 1001, any individual or entity who knowingly and willingly makes or uses a document or writing containing any false, fictitious or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

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[57 FR 5575, Feb. 14, 1992, as amended at 59 FR 44841, Aug. 30, 1994. Redesignated and amended at 61 FR 8747, Mar. 5, 1996]

§ 968.325 Annual submission of activities and expenditures.

(a) *General.* The Annual Submission is a collective term for all documents which the PHA must submit to HUD for review and approval before accessing the current FFY grant funds. Such documents include the Annual Statement, Work Statements for years two through five of the Five-Year Action Plan, local government statement, PHA Board Resolution, materials demonstrating the partnership process and any other documents as prescribed by HUD. For planning purposes, a PHA may use either the amount of funding received in the current year or the actual formula amount provided in HUD's notification under § 968.310(b)(1) in developing the Five-Year Action Plan for presentation at the resident meetings and public hearing. Work Statements cover the second through the fifth years of the Five-Year Action Plan and set forth the major work categories and costs by development or PHA-wide which the PHA intends to undertake in each year of years two through five. In preparing these Work Statements, the PHA shall assume that the current FFY formula amount will be available in each year of years two through five, as discussed in § 968.315(d)(5)(i). The Work Statements for all five years will be at the same level of detail so that the PHA may interchange work items. A PHA may budget up to 8% of its annual grant in a contingency account for cost overruns.

(b) *Submission.* After receiving HUD notification of the formula amount and estimating how much funding will be available from other sources, such as State and local governments, and determining its activities and costs based on the current FFY formula amount, the PHA shall submit its Annual Submission.

(c) *Acceptance for review.* (1) Upon receipt of an Annual Submission from a PHA, HUD shall determine whether:

(i) The Annual Submission contains each of the required components; and

(ii) The PHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate PHA performance, audit findings, and civil rights compliance findings.

(2) If the PHA has submitted a complete Annual Submission and all required information and assurances, HUD will accept the submission for review, as of the date of receipt. If the PHA has not submitted all required material, HUD will promptly notify the PHA that it has disapproved the submission, indicating the reasons for disapproval, the modifications required to qualify the Annual Submission for HUD review, and the date by which such modifications must be received by HUD.

(d) *Resident and local government participation.* A PHA is required to develop its Annual Submission, including any proposed amendments to its Comprehensive Plan as provided in § 968.315 (b) and (c), in consultation with officials of the appropriate governing body (or, in the case of a PHA with developments in multiple jurisdictions, in consultation with the CEO of each such jurisdiction or with an advisory group representative of all jurisdictions) and with residents and duly elected resident councils of the developments covered by the Comprehensive Plan, as follows:

(1) *Public notice.* Within a reasonable amount of time before the advance meeting for residents under paragraph (d)(2) of this section, and the public hearing under paragraph (d)(3) of this section, the PHA shall annually provide public notice of the advance meeting and the public hearing in a manner determined by the PHA and which en-

sures notice to all duly elected resident councils;

(2) *Advance Meeting with residents.* The PHA shall at least annually hold a meeting open to all residents and duly elected resident councils. The advance meeting shall be held within a reasonable amount of time before the public hearing under paragraph (d)(3) of this section. The PHA will provide residents with information concerning the contents of the PHA's Five-Year Action Plan (and any proposed amendments to the PHA's Comprehensive Plan to be submitted with the Annual Submission) so that residents can comment adequately at the public hearing on the contents of the Five-Year Action Plan and any proposed amendments to the Comprehensive Plan.

(3) *Public hearing.* The PHA shall annually hold at least one public hearing, and any appropriate number of additional hearings, to present information on the Annual Submission and the status of prior approved programs. The public hearing shall provide ample opportunity for residents of the developments covered by the Comprehensive Plan, officials of the appropriate governing body, and other interested parties, to express their priorities and concerns. The PHA shall give full consideration to the comments and concerns of residents, local government officials, and other interested parties in developing its Five-Year Action Plan, or any amendments to its Comprehensive Plan.

(4) *Expedited scheduling.* PHAs are encouraged to hold the meeting with residents and duly elected resident councils under paragraph (d)(2) of this section, and the public hearing under paragraph (d)(3) of this section between July 1 (*i.e.*, after the end of the program year—June 30) and September 30, using the formula amount for the current FFY. If a PHA elects to use such expedited scheduling, it must explain at the meeting with residents and duly elected resident councils and at the public hearing that the current FFY amount is not the actual grant amount for the subsequent year, but is rather the amount used for planning purposes. It must also explain that the Five-Year Action Plan will be adjusted when HUD

provides notification of the actual formula amount, and explain which major work categories at which developments may be added or deleted to adjust for the actual formula amount and that any added work categories/developments will come from the Comprehensive Plan.

(e) *Contents of Annual Submission.* The Annual Statement for each year must include, for each development or on a PHA-wide basis for management improvements or certain physical improvements for which work is to be funded out of that year's grant:

(1) A list of development accounts with an identification of major work categories;

(2) The cost for each major work category, as well as a summary of cost by development account;

(3) The PHA-wide or development-specific management improvements to be undertaken during the year;

(4) For each development and for any management improvements not covered by a HUD-approved memorandum of agreement or management improvement plan, a schedule for the use of current year funds, including target dates for the obligation and expenditure of the funds (see § 968.125);

(5) A summary description of the actions to be taken with non-CGP funds to meet physical and management improvement needs which have been identified by a PHA in its needs assessments;

(6) Any documentation that HUD needs to assist it in carrying out its responsibilities under the National Environmental Policy Act and other related authorities in accordance with § 968.110(c) and (d);

(7) Other information, as specified by HUD and as approved by OMB under the Paperwork Reduction Act; and

(8) A PHA resolution approving the Annual Submission or any amendments thereto, as set forth in § 968.315(e)(7).

(f) *Additional submissions with Annual Submission.* A PHA shall submit with the Annual Submission any amendments to the Comprehensive Plan, as set forth in § 968.315(f), and such additional information as may be prescribed by HUD. HUD shall review any proposed amendments to the Com-

prehensive Plan in accordance with review standards under § 968.320(b).

(g) *HUD review and approval of Annual Submission*—(1) *General.* An Annual Submission accepted in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the PHA in writing, postmarked within 75 calendar days of the date that HUD receives the Annual Submission for review under paragraph (c) of this section, that HUD has disapproved the Annual Submission, indicating the reasons for disapproval, the modifications required to make the Annual Submission approvable, and the date by which such modifications must be received by HUD. HUD may request additional information (e.g., for eligibility determinations) to facilitate review and approval of the Annual Submission during the 75-day review period. HUD shall not disapprove an Annual Submission on the basis that the Department cannot complete its review under this section within the 75-day deadline;

(2) *Bases for disapproval for Annual Submission.* HUD shall approve the Annual Submission, except where:

(i) *Plainly inconsistent with Comprehensive Plan.* HUD determines that the activities and expenditures proposed in the Annual Submission are plainly inconsistent with the PHA's approved Comprehensive Plan;

(ii) *Contradiction of PHA resolution.* HUD has evidence which tends to challenge, in a substantial manner, the certifications contained in the board resolution, as required by § 968.315(e)(7).

(h) *Amendments to Annual Statement.* The PHA shall advise HUD of all changes to the PHA's approved Annual Statement in its Performance and Evaluation Report submitted under § 968.330. The PHA shall submit to HUD for prior approval any additional work categories (except for emergency work) which are not within the PHA's approved Five-Year Action Plan.

(i) *Failure to obligate formula funds and extension of time for performance*—(1) *Failure to obligate formula funds.* If the PHA fails to obligate formula funds within the approved or extended time period, the PHA may be subject to an alternative management strategy

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which may involve third-party oversight or administration of the modernization function. HUD would only require such action after a corrective action order had been issued under § 968.335 and the PHA failed to comply with the order. HUD could then require an alternative management strategy in a corrective action order. A PHA may appeal in writing the corrective action order requiring an alternative management strategy within 30 calendar days of that order. HUD Headquarters shall render a written decision on a PHA's appeal within 30 calendar days of the date of its receipt of the PHA's appeal.

(2) *Extension of time for performance.* A PHA may extend the target dates for fund obligation and expenditure in the approved Annual Statement whenever any delay outside the PHA's control occurs, as specified by HUD, and the extension is made in a timely manner. Such revision is subject to HUD review under § 968.345(a)(2) as to the PHA's continuing capacity. HUD shall not review as to a PHA's continuing capacity any revisions to a PHA's Comprehensive Plan and related statements where the basis for the revision is that HUD has not provided the amount of assistance set forth in the Annual Submission, or has not provided such assistance in a timely manner.

(j) *ACC Amendment.* After HUD approval of each year's Annual Submission, HUD and the PHA shall enter into an ACC amendment in order for the PHA to draw down modernization funds. The ACC amendment shall require low-income use of housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC).

(k) *Declaration of trust.* As HUD may require, the PHA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which the PHA is obligated to operate its developments in accordance with the ACC,

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the Act, and HUD regulations and requirements.

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[57 FR 5575, Feb. 14, 1992, as amended at 59 FR 44841, Aug. 30, 1994. Redesignated and amended at 61 FR 8748, Mar. 5, 1996]

§ 968.330 PHA performance and evaluation report.

For any FFY in which a PHA has received assistance under this subpart, the PHA shall submit a Performance and Evaluation Report, in a form and at a time to be prescribed by HUD, describing its use of assistance in accordance with the approved Annual Statement. The PHA shall make reasonable efforts to notify residents and officials of the appropriate governing body of the availability of the draft report, make copies available to residents in the development office, and provide residents with at least 30 calendar days in which to comment on the report.

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[57 FR 5575, Feb. 14, 1992, as amended at 59 FR 44843, Aug. 30, 1994. Redesignated and amended at 61 FR 8748, Mar. 5, 1996]

§ 968.335 HUD review of PHA performance.

(a) *HUD determination.* At least annually, HUD shall carry out such reviews of the performance of each PHA as may be necessary or appropriate to make the determinations required by this paragraph, taking into consideration all available evidence.

(1) *Conformity with comprehensive plan.* HUD will determine whether the PHA has carried out its activities under this subpart in a timely manner and in accordance with its comprehensive plan.

(2) *Continuing capacity.* HUD will determine whether the PHA has a continuing capacity to carry out its comprehensive plan in a timely manner. After the first full operational year of CGP, CIAP experience will not be taken into consideration except where the PHA has not yet had comparable experience under the CGP.

(3) *Reasonable progress.* HUD shall determine whether the PHA has satisfied,

or has made reasonable progress towards satisfying, the following performance standards:

(i) Conformity with its comprehensive plan, including its annual statement and latest HUD-approved five-year action plan, and other statutory and regulatory requirements;

(ii) Continuing capacity to carry out its comprehensive plan in a timely manner and expend the annual grant funds; and

(iii) Reasonable progress toward bringing all of its developments to the modernization and energy conservation standards and toward implementing the work specified in the annual statement or five-year action plan designed to address management deficiencies.

(b) *Notice of deficiency.* Based on HUD reviews of PHA performance and findings of any of the deficiencies in paragraph (d) of this section, HUD may issue to the PHA a notice of deficiency stating the specific program requirements which the PHA has violated and requesting the PHA to take any of the actions in paragraph (e) of this section.

(c) *Corrective action order.* (1) Based on HUD reviews of PHA performance and findings of any of the deficiencies in paragraph (d) of this section, HUD may issue to the PHA a corrective action order, whether or not a notice of deficiency has previously been issued in regard to the specific deficiency on which the corrective action order is based. HUD may order corrective action at any time by notifying the PHA of the specific program requirements which the PHA has violated, and specifying that any of the corrective actions listed in paragraph (e) of this section must be taken. HUD shall design corrective action to prevent a continuation of the deficiency, mitigate any adverse effects of the deficiency to the extent possible, or prevent a recurrence of the same or similar deficiencies;

(2) Before ordering corrective action, HUD will notify the PHA and give it an opportunity to consult with HUD regarding the proposed action;

(3) Any corrective action ordered by HUD shall become a condition of the grant agreement;

(4) If HUD orders corrective action by a PHA in accordance with this section, the PHA's Board of Commissioners

must notify affected residents of HUD's determination, the bases for the determination, the conditioning requirements imposed under this paragraph, and the consequences to the PHA if it fails to comply with HUD's requirements.

(d) *Basis for corrective action.* HUD may order a PHA to take corrective action only if HUD determines:

(1) The PHA has not submitted a performance and evaluation report, in accordance with § 968.330;

(2) The PHA has not carried out its activities under the CGP program in a timely manner and in accordance with its comprehensive plan or HUD requirements, as determined in paragraph (a)(1) of this section;

(3) The PHA does not have a continuing capacity to carry out its comprehensive plan in a timely manner or in accordance with its comprehensive plan or HUD requirements, as determined in paragraph (a)(2) of this section;

(4) The PHA has not satisfied, or has not made reasonable progress towards satisfying, the performance standards specified in paragraph (a)(3) of this section;

(5) An audit conducted in accordance with 24 CFR part 44, or pursuant to other HUD reviews (including monitoring findings) reveals deficiencies that HUD reasonably believes require corrective action; or

(6) The PHA has failed to repay HUD for amounts awarded under the CGP program that were improperly expended.

(e) *Types of corrective action.* HUD may direct a PHA to take one or more of the following corrective actions:

(1) Submit additional information:

(i) Concerning the PHA's administrative, planning, budgeting, accounting, management, and evaluation functions, to determine the cause for a PHA not meeting the standards in paragraph (a)(1), (a)(2), or (a)(3) of this section;

(ii) Explaining any steps the PHA is taking to correct the deficiencies;

(iii) Documenting that PHA activities were not inconsistent with the PHA's annual statement or other applicable laws, regulations, or program requirements; and

(iv) Demonstrating that the PHA has a continuing capacity to carry out the comprehensive plan in a timely manner;

(2) Submit detailed schedules for completing the work identified in its Annual Statements and report periodically on its progress on meeting the schedules;

(3) Notwithstanding 24 CFR 85.36(g), submit to HUD the following documents for prior approval, which may include, but are not limited to:

(i) Proposed agreement with the architect/engineer (prior to execution);

(ii) Complete construction and bid documents (prior to soliciting bids);

(iii) Proposed award of contracts, including construction and equipment contracts and management contracts; or

(iv) Proposed contract modifications prior to issuance, including modifications to construction and equipment contracts, and management contracts;

(4) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the PHA's Comprehensive Plan, Five-Year Action Plan, or Performance and Evaluation Report;

(5) Not incur financial obligations, or to suspend payments for one or more activities;

(6) Reimburse, from non-HUD sources, one or more program accounts for any amounts improperly expended;

(7) Submit to an alternative management strategy which may involve third-party oversight or administration of the modernization function; and

(8) Take such other corrective actions HUD determines appropriate to correct PHA deficiencies.

(f) *Failure to take corrective action.* In cases where HUD has ordered corrective action and the PHA has failed to take the required actions within a reasonable time, as specified by HUD, HUD may take one or more of the following steps:

(1) Withhold some or all of the PHA's grant;

(2) Declare a breach of the ACC grant amendment with respect to some or all of the PHA's functions; or

(3) Any other sanction authorized by law or regulation.

(g) *Reallocation of funds that have been withheld.* Where HUD has withheld for a prescribed period of time some or all of a PHA's annual grant, HUD may reallocate such amounts to other PHAs/IHAs under the CGP program, subject to approval in appropriations acts. The reallocation shall be made to IHAs which HUD has determined to be administratively capable under § 950.135, and to PHAs under the CGP program which are not designated as either troubled or mod troubled under the PHMAP at 24 CFR part 901, based upon the relative needs of these IHAs and PHAs, as determined under the formula at § 968.103(e) and (f).

(h) *Right to appeal.* Before withholding some or all of the PHA's annual grant, declaring a breach of the ACC grant amendment, or reallocating funds that have been withheld, HUD will notify the PHA and give it an opportunity, within a prescribed period of time, to present to the Assistant Secretary for Public and Indian Housing any arguments or additional facts and data concerning the proposed action.

(i) *Notification of residents.* The PHA's Board of Commissioners must notify affected residents of HUD's final determination to withhold funds, declare a breach of the ACC grant amendment, or reallocate funds, as well as the basis for, and the consequences resulting from, such a determination.

(j) *Recapture.* In addition, HUD may recapture for good cause any grant amounts previously provided to an PHA, based upon a determination that the PHA has failed to comply with the requirements of the CGP program. Before recapturing any grant amounts, HUD will notify the PHA and give it an opportunity to appeal in accordance with paragraph (h) of this section. Any reallocation of recaptured amounts will be reallocated in accordance with paragraph (g) of this section. The PHA's board of Commissioners must notify affected residents of HUD's final determination to recapture any funds.

(k) *Cumulative remedies.* The authority to condition, withhold, reallocate or recapture a PHA's grant, as provided in this section, is in addition to the authority contained in § 968.310(c) to reduce a PHA's formula allocation based

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upon its designation as a mod troubled PHA.

(Approved by the Office of Management and Budget under control number 2577-0157)

[57 FR 5575, Feb. 14, 1992, as amended at 59 FR 44843, Aug. 30, 1994. Redesignated and amended at 61 FR 8748, Mar. 5, 1996; 62 FR 27126, May 16, 1997]

Subpart D—Vacancy Reduction Program

SOURCE: 59 FR 30478, June 13, 1994, unless otherwise noted.

§ 968.416 Fund requisitions.

To request funds against the total approved vacancy reduction program budget, a PHA must submit a request to HUD in accordance with HUD requirements.

§ 968.419 Grantee's oversight responsibilities.

Each grantee shall provide, by contract or otherwise, adequate and competent supervisory and inspection personnel to assure work quality and progress during modernization, whether work is performed by contract or force account labor and with or without the services of an architect/engineer.

§ 968.422 Progress reports and completion schedule.

(a) *Reports required.* Until completion of the activities funded under the vacancy reduction program, the grantee shall submit to HUD, in a form and at a time prescribed by HUD, the following:

(1) A report on modernization fund expenditures;

(2) A narrative report that includes an accounting of the grantee's progress against the milestones established in its vacancy reduction plan. The report shall include the number of both funded and regular turn-over units that have been made ready for occupancy; and

(3) Any additional information as HUD may require.

(b) *Completion schedule.* HUD expects that most work items funded under this program will be completed within one year. Work items must be com-

pleted within two years from the date of funding, or by some other time as may be specified in the Notice of Funding Availability, unless prior approval is obtained from HUD.

(Approved by the Office of Management and Budget under control number 2577-0181)

§ 968.425 HUD review of grantee performance.

(a) *Performance reviews.* HUD shall carry out such reviews of the performance of each funded PHA as may be necessary or appropriate to determine compliance with the PHA's vacancy reduction plan and related HUD requirements. In these reviews HUD will determine whether the PHA has:

(1) Carried out its vacancy reduction activities in a timely manner and in accordance with its vacancy reduction plan;

(2) Completed, or made reasonable progress toward completing, the physical items funded under the vacancy reduction plan, and whether the work items being carried out conform with the modernization and energy standards in § 968.115 of this chapter;

(3) Implemented, or made reasonable progress toward implementing, the management improvements funded under the vacancy reduction program; and

(4) Made reasonable progress in meeting the goals established in its vacancy reduction plan.

(b) *Notice of deficiency.* If HUD finds any deficiency in a review of a grantee's performance under this part, HUD may issue to the grantee a notice of deficiency stating the specific program requirements that the grantee has violated and requesting the grantee to take corrective action.

(c) *Corrective action order—(1) Issuance.* If HUD finds any of the deficiencies listed in paragraph (c)(3) of this section in its review of the grantee's performance, HUD may issue to the grantee a corrective action order, whether or not a notice of deficiency has previously been issued on the specific deficiency. The corrective action order shall notify the grantee of the specific program requirements that the grantee has violated and shall specify the corrective action.

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(2) *Consultation with grantee.* Before ordering corrective action, HUD will give the grantee an opportunity to consult with HUD regarding the proposed action.

(3) *Bases for corrective action.* HUD may order a grantee to take corrective action only if HUD determines:

(i) The grantee has not submitted a performance report as required by HUD;

(ii) The grantee has not carried out activities under its vacancy reduction program in a timely manner and in accordance with HUD requirements;

(iii) The grantee does not have continuing capacity to carry out activities in its vacancy reduction plan; or

(iv) An audit conducted in accordance with 24 CFR part 44, or pursuant to other HUD reviews, reveals deficiencies that HUD reasonably believes require corrective action.

(d) *Nature of corrective action.* (1) HUD shall design corrective action to prevent a continuation or recurrence of the same or a similar deficiency or to mitigate to the greatest extent feasible any adverse effects of the deficiency.

(2) HUD may order a grantee to take the corrective action that HUD determines appropriate for carrying out the elements of the vacancy reduction plan. Corrective action may include, but is not limited to, suspension of grantee's authority to incur costs against the vacancy reduction funding and reimbursement, from sources other than HUD funds, of any amount spent improperly.

(e) *Failure to take corrective action.* In cases where HUD has ordered corrective action and the grantee has failed to take the required action within a reasonable time, as specified by HUD, HUD may take one or more of the following steps:

(1) Withhold vacancy reduction funds from the grantee;

(2) Declare a breach of the ACC by the grantee; and

(3) Any other sanctions authorized by law or regulation.

§ 968.428 Program closeout.

(a) *Requirements for grantees.* Upon completion of the activities funded in accordance with this part, the grantee shall submit to HUD, and in a form

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prescribed by HUD, the actual modernization cost certificate for HUD's review, audit verification, and approval. The grantee shall immediately remit any excess funds provided by HUD. If the audited modernization cost certificate discloses unauthorized expenditures, the grantee shall take such corrective actions as HUD may direct.

(b) *Audit.* The audit shall follow the guidelines prescribed in 24 CFR part 44, Non-Federal Government Audit Requirements.

(Approved by the Office of Management and Budget under control number 2577-0181)

§ 968.435 Other program requirements.

In addition to the program requirements applicable to this subpart under § 968.110, each PHA participating in the vacancy reduction program under this subpart shall:

(a) Certify that any modernization, reconstruction, or rehabilitation activities that are funded under this subpart will be undertaken in accordance with modernization standards, as set forth in HUD Handbook 7485.2, as revised;

(b) Certify that activities undertaken within vacant units will bring the affected units into compliance with the Housing Quality Standards, as set forth in § 982.401 of this title, except that § 982.401(j) of this title shall not apply; the applicable lead-based paint requirements in part 35 subparts A, B, L and R, of this title shall apply.

(c) Provide for resident involvement, in a manner to be determined by the Secretary, in the process of applying for any funding available under this part.

[59 FR 30478, June 13, 1994, as amended at 64 FR 50229, Sept. 15, 1999]

PART 969—PHA-OWNED PROJECTS—CONTINUED OPERATION AS LOW-INCOME HOUSING AFTER COMPLETION OF DEBT SERVICE

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